Theologia Moralis

Volume VII
Book Four: On the particular precepts proper to certain states of men

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[*Latin ed. p. 9*]

BOOK FOURTH OF MORAL THEOLOGY. CONCERNING THE PARTICULAR PRECEPTS PROPER TO THE CONDITION OF CERTAIN PERSONS. Since all the faithful are, just as they are bound to know the precepts of the Decalogue, so also are they bound to know other precepts pertaining to the condition and office of each individual, under the penalty of mortal sin, so that even their ignorance, if vincible, although it does not follow transgression, is a mortal sin (Silv., Sayr., Sanch., Bald. vol. i., book i., chapter g, number 8, and chapter g); hence, after the precepts common to all, we shall treat in particular of the precepts proper to certain conditions.

CHAPTER I. CONCERNING THE RELIGIOUS STATE.

FIRST DOUBT. WHAT IS THE NATURE OF THE RELIGIOUS STATE?

1. What is the religious state? And who are religious?

2. Does a religious person, promoted to the cardinalate or episcopate, remain bound by their vows?

[*Latin ed. p. 10*]

3. Whether one is bound to observe his rule.

4. Whether one promoted to a parish is bound to the habit and rule.

R. SP. "The state of religion is that of those who strive for the perfection of divine charity, having made vows of perpetual poverty, chastity, and obedience, and a stable manner of living in common, approved by the Church."

I say: "approved by the Church"; because, although formerly bishops could approve of religious orders, afterwards, in the Lateran Council under Innocent III, it was decreed that no new religious order should be introduced unless approved by the Pope. The reason is, because since a religious order is a sacred community in which there ought to be spiritual jurisdiction, and this jurisdiction comes from the Pope, it is fitting that such a community should be approved by the same. Laym. l. 4. t. 5. c. i.

Therefore, the cases are resolved:

1. o It is not required for the essence of religion that solemn vows be made. The reason is, because those in the Society of Jesus who make simple vows are true religious, as defined by Gregory XIII in the bull *Ascendente Domino*. Laym. l. c. n. 4.

2. o Those military orders which only vow conjugal chastity are not religious; but the Knights of St. John and the Teutonic Knights, and those similar to them, are truly religious, since they have the three substantial

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vows. Similarly, from the brethren...

[*Latin ed. p. 11*]

And concerning the tertiary sisters, whether of the Order of St. Francis or of others, they are only considered religious who, within an approved religious institute, according to a certain rule, make three substantial vows. On the contrary, those are not considered religious who, although they may make these three vows and live together, either communally or separately, do not adhere to a rule approved by the Apostolic See. Laym. l. c. § 3. Religious are not those who, having made a vow of perpetual poverty and chastity, vow obedience to a confessor or a bishop. The reason is that such a vow does not fall under the spiritual jurisdiction, which ought to proceed from God, through his vicar. Ibid. n. 7. § 4. Although the Pope may grant a dispensation in solemn religious vows so that someone may cease to be a religious, he cannot grant a dispensation so that someone remaining a religious is not bound by the substantial vows; because these pertain to the essence of religion. Laym. l. c. n. 8, from Nav. etc. § 2. § 5. A religious person promoted to the cardinalate or episcopate remains bound by the essential vows of their religion, although they may be considered exempt from certain effects of poverty and obedience. Furthermore, although absolved from the rule concerning guilt and penalty, they nevertheless ought to observe those things that befit them and are consistent with their office, out of moral obligation of honesty. Therefore, concerning the habit, they ought to wear the color of their order, although concerning the form, it is [appropriate] for bishops.

[*Latin ed. p. 12*]

It is possible for [a religious] to conform to secular matters, as Clement VIII conceded: see Sanch. 6 de mor. cap. 6. Indeed, if the episcopate is relinquished or if [the bishop] is removed from office due to fault, without degradation, he is nevertheless not obligated to return to regular observance; because he retains the eminence of the episcopate, for which reason he was exempted from regular obedience. Ibid., citing St. Thomas, Rodriguez, Sanch., etc. This is different in the case of a religious cardinal who is not a bishop: for, having relinquished the cardinalate, he retains nothing from the dignity of the cardinalate; therefore, if the Pope accepts his resignation, he is obligated to return to the regular observance of his order. Pal., Lug. resp. mor. l. 5. d. 12. "Therefore, the question arises: whether a religious who has been appointed to the episcopate remains absolved from his vows. (Understand this to mean absolved from the vows of obedience and poverty; for he remains bound by the vow of chastity by reason of his order.) The first opinion affirms this, along with Vasquez, Soto, Medina, and Angles; and, specifically concerning the vow of poverty, Palacius, Tamburrini, and Dian hold this view, and Sanchinez and Villalobos, with

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Salmeron, tr. 15 de stat. rel. cap. 5. n. 30 and 32, consider it probable; and they prove this from cap. unic. 4. q. 1, where it is said: 'A monk whom canonical election frees from the yoke of the monastic profession, and sacred ordination makes a bishop, etc.' From this, they say that he is freed from the vow of obedience. The text continues: 'as, for example, a legitimate heir...' "

[*Latin ed. p. 13*]

He subsequently has the power to rightfully claim the inheritance. For if it is said that a legitimate heir can rightfully claim his paternal inheritance, then he can acquire true dominion over it; and it is only to true owners that it pertains to claim. And thus, he is also released from the vow of poverty. The second opinion, which we follow, and which is held by Bus., Less. de c. 40, n. 115; Pal. t. 3, tr. 16, d. 4, p. 14, n. 4; Sanch. l. 6, dec. c. 6, n. 2; Suar. de rel. t. 4, tr. 8, l. 3, c. 17, n. 1; Laym. l. 4, tr. 5, c. 2, n. 9; and Salm. l. c., n. 31, along with Bon., Lez., etc., and Spor. t. 3, de statu rel. p. 87, n. 165, along with the common opinion, holds that religious bishops are not absolved from their vows, except insofar as their observance is incompatible with the episcopal office. The reason is, firstly, because a bishop who becomes a religious remains a religious, as all acknowledge, and as the obligation to wear the habit (from c. Clerici, de vita et hon. cler.) demonstrates; therefore, he remains bound by the vows, which are of the essence of religious life, as stated in the section on vows, n. 244. Secondly, it is asked: because personal vows accompany the person insofar as they are compatible with his state. And this opinion is expressly held by St. Thomas, 2-2, q. 88, art. 11, ad 4, where he says: "A religious who becomes a bishop, just as he is not absolved from the vow of chastity, so neither is he absolved from the vow of poverty; because he should have nothing as his own." Similarly, he is not absolved from...

[*Latin ed. p. 14*]

He is bound by a vow of obedience, but he is not obliged to obey by accident, if he has no superior: just as not even the abbot of a monastery; who, however, is not absolved from the vow of obedience. And elsewhere in question 186, answer 3, he explains the text in chapter "Monachus" as stated above: "But they (regular bishops) cannot have a proper inheritance in any way: for they do not claim the paternal inheritance as their own, but as due to the Church. And then he adds: The (bishop) cannot make a will; because only the administration of ecclesiastical affairs is entrusted to him, which ends with death." In the same way, the Glossa verb. "Legitimus" explains the aforementioned text, saying: "But it is objected: if he claims the inheritance, then he can have a proper inheritance, although he remains a monk; which should not be. But it is said to him, that is, to the Church." And the same seems to be expressly stated in the very canon cited, where it

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is said at the end: "For after the bishop is ordained to the altar to which he is consecrated and titled, according to the sacred canons, he restores what he could have acquired." From this, Salm. n. 35, together with St. Thomas, infer that 1st, a regular bishop cannot make a will regarding any goods; 2nd, that these regular bishops can, as other bishops, dispose of the goods of the Church for the moderate support of themselves, but...

[*Latin ed. p. 15*]

Not to others: for superfluous things ought to be expended on the poor and pious works; unless they themselves have acquired something by living sparingly. For then, it is presumed that the Church permits what they freely dispose of concerning it. Thus, Salm. ibid. n. 32, in fine, with Nav., Less., Mol., Sanch. etc. 3. Quær. 2.º, whether a regular bishop is bound to observe his rule. Answer: with Bus. and Salm. de stat. rel. c. 5. n. 34, and there Caj., Val., Bon., Pal., Sanch., Sot., Suar., Less., against others, it is more probable that he is not bound by the rule under any guilt, but only by a debt of honor; a debt which does not even obligate under a small penalty, as they teach ibid. Less., Sot., Pal., Sanch. etc. The reason is, because a regular bishop is absolutely freed from the yoke of the rule, as from d. c. unic., where it is said: "A monk whom canonical election frees from the yoke of the monastic profession." But a regular bishop is entirely freed from all other proper vows of a particular religion, as Salm. ex n. 37, with Sanch., Pal. etc. Note that abbots who have their own diocese with episcopal jurisdiction are similar to all bishops in all things. Commonly, Salm. c. 5. n. 29, with Pal., Sanch. etc. 4. » 6.º A religious person promoted to a parish, while remaining bound by his vows, is obligated to wear the habit of his religion and to observe the rule.

[*Latin ed. p. 16*]

in all those things which can be consistent with their office; and this not only according to moral rectitude, but under the obligation of grave guilt, if the rule obliges them to it. (Thus, Salm. tr. 15, on the state of religious, chapter 5, paragraph 40, with Sanch., Pell., Bon., etc., against Suar. and Pal., who say that they are bound to the vows, but not to the observance of the rule.) Laym. book 4, volume 5, chapter 1, paragraphs 11 and 12; where he adds that, although a religious parish priest remains subject to his superior in those things which pertain to the rule, it is nevertheless commonly observed in many places that he is exempted from the obedience of the prelate not only in matters pertaining to ecclesiastical discipline, but also in most other things, and is subject to the bishop. See Sanch. book 6, morals, chapter 6, paragraph 36.

"DOUBT SECONDLY, CONCERNING WHAT IS REQUIRED FOR THE VALIDITY OF A RELIGIOUS PROFESSION.

5. What conditions are required for a religious profession?

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1. The aptitude of the one making the vow. What about the age and examination of young women who are taking the religious habit?

6. 2. Is the consent of the prelate of the order required?

7. 3. That the profession be spontaneous.

8. How and when can a professed person appeal regarding the nullity of their profession?

[*Latin ed. p. 17*]

5. » R ESPONSE: Three conditions are required for its validity. 1. There must be the quality or aptitude of the one making the vow, namely, that, according to the Council of Trent, Session 25, chapter 15, concerning religious orders, she has completed the sixteenth year of her age, and has spent a full year with a religious manner of life in probation, and has no impediment which is considered substantial by the statutes confirmed by the Pope in this order. Azor. tr. 1. book 12. chapter 2. questions 6 and 7; Rodr. tr. 2. chapter 6. » Regarding nuns, the Council of Trent decrees that girls should not receive the religious habit before completing their twelfth year; therefore, they cannot receive it before that time, as held by Alex. confessar. mon. chapter 2, section 1, question 10, along with Tamb., Rodr., Naldo (contrary to Sanch. book 4, decree chapter 18, number 35, Vill. etc.) and as affirmed by the declaration of the Sacred Congregation. The will of the girls must be explored before the reception of the habit and before the profession, by the bishop, or, if he is hindered, by a vicar or other designated person. If both investigations were omitted, it would be a grave fault, but the profession would be valid, as stated by Alex. in the aforementioned passage, along with Sanch., Barb. with the declaration of the Sacred Congregation, and Salm. de privil. book 18, chapter, number 14, who note that this investigation is customarily made once and only before the profession, within 15 days. Furthermore, the bishop can and should explore the will of the girls even in exempt monasteries, as stated by Salm. ibid.

[*Latin ed. p. 18*]

6. 2. The condition is the expressed or tacit consent and acceptance of the prelates of the order: for thereby one must be incorporated into the religion. An error concerning the substance, whether on the part of the one making the profession or the one admitting him, invalidates the profession. Salm., cap. 4, no. 27. And this is ordinarily done not only with the advice, but also with the consent of the chapter, or at least of the majority or principal part thereof, according to the statutes of each order. Nav., Less., cap. 41, d. 7.

7. 3. In order that a profession be freely made, it must not be compelled by grave fear: such as would be imprisonment, the withholding of food, because he would not consent to the profession. Also, reverential fear, not merely by itself, but when accompanied by frequent importunity, flattery,

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and the repeated insistence of authority, or by a grave offense or a long-continued indignation of relatives, together with threats of withholding subsidies, if he should leave the religion; for these, either individually or certainly together, considered in the condition of a simple, timid person, can instill a just fear and invalidate the profession, as Laym. with others, l. 4, tr. 5, c. 5; Less., l. 2, c. 43, dist. 7. (See also concerning this matter, l. 7, no. 1055: for the profession is likened to marriage. Salm., de statu rel., cap. 4, no. 26.)

From this, the following cases are resolved:

8. 1. He who has made an invalid profession.

[*Latin ed. p. 19*]

"If, due to a defect in some condition, as mentioned above, and he does not subsequently ratify it, either tacitly or expressly, he can leave the religious order and marry; although, for the avoidance of scandal, he must declare the reason for his departure, and if the cause arises from external circumstances, the defect in his profession; for after that time, according to the Council of Trent, Session 25, chapter 19, it is not heard, because it is presumed that he has ratified it in the meantime.

2. However, if he knew that this legal presumption was false, because he was unable to appeal within five years, either through ignorance of the impediment or because he was prevented by a serious fear or other just cause, or if the impediment is essential and perpetual, or at least lasts longer than five years, then, after that time has elapsed, he can appeal, and he must be heard in judgment, at least in an extraordinary manner, or be fully restored; as, on the contrary, teach Navarrus, Sanchez, Lessius, Azorín, Diana, and Barbatus, in Trid. sess. 25. c. 19. n. 8., where they cite others. And unless something else prevents it, he can flee, as Layman teaches. He adds: if flight could not be attempted without serious scandal or inconvenience, he should be warned by his confessor to tacitly ratify his profession; which will happen if he wears the habit proper to his order, and performs the acts proper to that profession, with the intention of being considered as such a member.

[*Latin ed. p. 20*]

It is desired that it be so. The aforementioned authors, cited above, and *Dianae*, page 8, volume 7, section 51, where, from the Council of Trent, session 25, chapter 19, it is proven that a bishop cannot pronounce a judgment regarding the invalidity of a profession without the intervention of the superior of the order, and if he does so, it will be null. (Thus, Salm., chapter 5, number 15, generally. One who is doubtful about his profession cannot appeal; Salm., chapter 9, number 8, with Pell and Lez.; because religion possesses [the right]: understand, if doubt arises. Nor is one believed who appeals, unless he proves that he falsely consented, from chapter 2,

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concerning the rule, Salm., number 9.) "Here, the following must be added, which were recently established by the Most Holy Pope Benedict XIV in his bull, which begins *Si datam hominibus*. (In the collection of bulls, volume 2, number 47, page 393.) There it is established: 1. That all that has been decreed concerning religious men also applies to religious women, where the same reason applies. 2. That causes for the invalidity of a profession must be examined by the regular local prelate, at the time the dispute arises, and simultaneously by the ordinary; for non-exempt nuns, by the ordinary alone; and for exempt nuns, by the ordinary and by the prelate to whom the administration of the monastery has been entrusted. 3. That the prelate cannot dismiss a professed religious, unless the cause is known to him and to the ordinary, as above, in the case where he learns of an impediment afterward, even if he has questioned the one subject to him, and that the professed has made no other profession, and that he has concealed it. 4. That it is possible to..."

[*Latin ed. p. 21*]

1. Even if nullity is alleged, after the lapse of five years, if the professed person belatedly makes a claim within that period.

2. The cognizance of the cause pertains to the Apostolic See, if the profession was made outside of the novitiate.

3. Apostates are to be repelled from the judgment, unless they have resumed the habit of the religious order.

4. A professed person cannot allege the annulment of his profession on the grounds of force or fear imposed, if he does not make a claim within five years, even if he alleges that the force and fear have always persisted. However, this person is to be granted restitution in full, but only through the Apostolic See, after a process has been completed by his prelate and ordinary, with the assistance of a defender of the profession, who must also be present in Rome.

5. After the first judgment, a professed person cannot leave the religious order, but must wait for a second judgment, after an appeal has been made by the defender.

THIRD DOUBT. CONCERNING WHAT A RELIGIOUS IS BOUND TO DO WITH REGARD TO HIS PROFESSION.

6. Concerning the obligation of a religious to strive for perfection.

7. When a religious gravely sins against this obligation.

8. Whether he sins gravely if he intends to observe only the obligations that are binding under a grave penalty.

9. Whether any Christian gravely sins if he proposes to commit all venial sins.

10. Whether a prelate ever gravely sins by neglecting to correct minor

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faults of his subordinates.

[*Latin ed. p. 22*]

9. "In Response: A Religious person is bound by the force of his profession to progress in some way on the path of perfection; because by the force of his profession, he is bound to will to preserve his state, which is perfection, or a striving towards perfection (although it is not a precept in itself, but a counsel): and this is intrinsically, to will to strive towards perfection. St. Thomas [Aquinas], 2-2, q. 186, art. 1 and 2, and q. 184, art. 5; Layman, book 3, treatise 5, chapter 2, no. 1; Suarez, *De Religione*, volume 4, book 1, chapter 4; Bardi, *De Consiliis*, book 7, chapter 6, § 5." Therefore, it follows that: 1st, a Religious person is not actually bound to be perfect, but only to strive for perfection. Bardi, etc., in the aforementioned passage. 2nd, he is bound to strive for perfection: 1st, through essential means; 2nd, through vows; 3rd, through secondary helps, without despising them; Layman, book 3, treatise 5, chapter 9, no. 13. 4th, he is bound to use certain means; and if he rejects all means, he is not in a state of salvation; Suarez and Layman, in the aforementioned passages, stating that if he does not apply himself to the pursuit of perfection, but neglects all admonitions and rules, because they are not under a mortal obligation, he sins mortally. 5th, he is bound to perform certain supererogatory or special good works, which are not commanded nor promised; because otherwise, speaking morally, he cannot have the due intention of salvation. Suarez, in the aforementioned passage.

[*Latin ed. p. 23*]

5. He is bound to strive for perfection through the means of his religious order, and not through other means; that is, by observing its rules. Sanchez, book 6, chapter 5, paragraphs 1 and 2. He sins, firstly, through contempt of the rule, that is, if he does not wish to submit to it, ibid., paragraph 6. Secondly, if he only wishes to observe what is required under pain of mortal sin; because he despises perfection, ibid., paragraph 7. Thirdly, through an act directly contrary, that is, by refusing perfection; which is mortal, Sanchez, paragraph 10, Pellizari and Bardesano, in the same place. 4. If someone not only intends not to be diligent in observing the rule, but also never intends to observe it, even when he can easily do so, it is mortal, or at least a proximate disposition to that, and it is scarcely possible to do so without formal contempt. Suarez, in the cited place, paragraph 24. 5. If, from a lack of concern and without any just reason, he directly intends not to observe a certain rule, it will be at least a slight contempt and a venial sin. Suarez, in the cited place. 6. To frequently and habitually violate a rule is said to be mortal, Sanchez, book 6, moral theology, chapter 4, paragraphs 18 and 20; because it disturbs the religious discipline, and because, according to some, it is a contempt, either interpretative, or at least highly

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probable, and he is bound under mortal sin to live in such a way that he is not gravely harmful to the religious order.

[*Latin ed. p. 24*]

Others, by a bad example, lead to laxity in the rules (Sanch., Laym., book 4, treatise 5, chapter 9). Then, because he has placed himself in a state in which he is, as it were, incorrigible and deserving of expulsion. Every one is bound, by reason of the vows by which he has dedicated himself to religion, to conduct himself in such a way as to be tolerable and not to deserve expulsion; but he who, without making any effort towards perfection, transgresses the rules without discrimination, renders himself intolerable, so that he ought to be expelled, or, if he is tolerated, he does great harm: therefore, he acts, accidentally and indirectly, against his profession, and commits a mortal sin. Sanch., chapter 4, number 18. See the authors cited above. 7th. A Religious of the Society of Jesus commits a mortal sin if he does not make every effort to avoid defects for which he foresees that he may be dismissed or expelled: and although, if dismissed in this way, he is free in his conscience, if, however, he is dismissed because of fraud or sins committed to that end, the dismissal is invalid, as if obtained by deceit, giving him the very cause for it (as in marriage and other contracts); hence, he is subject to the penalties of apostasy. Bon., *De clausuris*, question 1, page 12, section 1. 8th. A Scholastic of the Society of Jesus who, through bad morals, extorted a dismissal or obtained it through false allegations, is not free from his vows. Less., book 2, chapter 40, section 15; Sanch., book 6, chapter 9, number 99; Laym., book 5, treatise 5, chapter 9, number 13.

[*Latin ed. p. 25*]

10. For a fuller understanding of this point, let us consider: In what circumstances does a religious person gravely sin against the obligation to strive for perfection? Answer: He sins gravely when he transgresses the rules, even if they only impose a venial fault or no fault at all, out of contempt; this is in common with *Summa Theologica* 2-2, question 186, article 2 and 9; Salm, *De statu religionis*, book 1, chapter 1, number 20, etc. However, a religious person is considered to transgress the rules out of contempt when he violates them with the intention of not submitting to them or to the precepts of his superiors. Thus, Bus, *Inferno*, number 3, with Sanchez and Lessius, book 2, chapter 41, number 76; Salm, book 1, number 20, with Lez. Furthermore, if he omits to observe them as if they were empty, he sins out of contempt; not, however, if he omits them led by concupiscence, or because he believes they are not necessary for his salvation, or if he judges that they are not imposed under a grave obligation. Thus, *Summa Theologica* 2-2, question 186, article 9, ad 3; Sanchez, *Decreta*, book 6, chapter 5, number 1; Salm, book 1, number 20, with Pal, Ant. a Sp. S. Therefore, to transgress the rules in matters of little importance,

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even out of habit, does not exceed a venial sin, as Salm notes there, with Lez, Az, Garcia, and de Alex, *Confessionale*, book 1, chapter 1, section 2, question 11, with *Summa Theologica* 2-2, question 186, article 5, ad 3. But rarely will a transgression be excused as venial, even if the rule imposed no fault at all, as de Alex rightly notes in the aforementioned place, book 1, section 2, question 1, and Laym, book 4, treatise 5, chapter 9, number 8.

[*Latin ed. p. 26*]

"As Vasquez, Sanchez, and Valdés state in *D. Th.*, book cited, chapter 3, where they say: 'But those who could sin venially or mortally through negligence or lust, or through contempt.' Conversely, Layman says in the same place, with the aforementioned authors, that if someone transgresses a rule for a good end, for example, the rule of silence, by speaking so as to comfort a grieving companion, he does not sin in any way.

Response 2: A religious person sins mortally who firmly resolves not to strive for perfection, or who in no way cares about it: Sanchez, *d. c.*, 5, number 10; Salm, number 21, with Pellizzari, Lez, Antoninus of Spain, *S. et de Alex.*, chapter 1, section 1, question 111.

Response 3: He sins gravely through scandal if, by his example, he leads others to relax the rule. Salm, *d. n.*, 12, with Sanchez, Silva, Lez, and Pellizzari. But this must be understood if the matter is grave, as Salm notes there, at the end, with Antoninus of Spain. And it is important to carefully consider the words of Sanchez, *dec.*, book 6, chapter 4, number 17, where he teaches thus: 'A religious person is bound to live in such a way under mortal sin that he does not seriously harm his religious order, by leading others by his wicked example to excessively relax the rule; as would be the case if he never wished to observe silence, nor to pray, nor to walk modestly, and if he entered the chambers of all the religious and transgressed the statutes of the religious order.'

Given these premises, question 1: Does a religious person sin gravely who intends to observe only..."

[*Latin ed. p. 27*]

Certain commands are binding under a grave penalty, while others establish that all transgressions or neglect of them are to be considered. The first opinion, it is probable, affirms; because the very intention of not caring for the rules, even if they are only binding under a light penalty, is virtually a contempt for them. Thus, Croix, book 4, number 57; Elb., volume 2, page 612, number 592; also Lez., Silv., Barb., Escob., etc., apud Salm., chapter 1, number 23. However, the second opinion, which is more common and more probable, denies that such a transgression constitutes a grave sin. Thus, Sanch., book 6, chapter 5, number 9, and chapter 4, number 18, *in fine*; Salm., number 24, with Azor., Pal., Val., Suar., Peyrin., Pelliz., etc. And the same is expressly taught by St. Thomas, *Summa Theologica*,

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question 186, article 9, *in corpore*, where the Holy Doctor then condemns as mortally sinful a religious person who either transgresses a rule out of contempt (understood as formal contempt) or who acts against a rule or an express command of the superior which is binding under a grave penalty. The reason is that, by the very fact that a religious person wishes to observe the precepts which bind him under a grave penalty, while these precepts, both concerning himself and concerning others, are merely counsels, in wishing to observe them, he already tends towards perfection.

12. However, understand that he will be excused from mortal sin by reason of this specific obligation which he has to tend towards perfection; for he will scarcely be excused under other headings, namely, by reason of the danger of transgressing his vows or of a grave damage.

[*Latin ed. p. 28*]

Concerning matters pertaining to religious life, as far as regular discipline is concerned, etc.; all these things (as Sanch teaches in the aforementioned passage) are morally impossible to avoid for one who intends to transgress or neglect all statutes that are not under a grave obligation.

Question: By the way, 2ndly, does any Christian gravely sin if he intends to commit all venial sins? Sanch, in the aforementioned passage, chapter 5, number 4, and Bonaventure affirm this; because, as St. Thomas teaches, venial sins, of themselves, dispose the soul towards mortal sin. However, Palearius and Antoninus of Spain, as cited by Salmeron, in the aforementioned passage, chapter 1, number 29 (excluding, however, contempt or the imminent danger of falling into mortal sin, and considering past experience), deny this. The reason is that a deliberate intention only remotely leads to mortal sin.

Question: 3rdly, does a superior ever gravely sin by neglecting to correct minor faults of his subjects? This must be affirmed (contrary to Lorca), as Lugo, Trullius, Peyre, Diana, and de Alex, in their common commentary, book 1, chapter 11, section r, question 1, generally state, in the case where there are many such faults, and of such a nature (e.g., concerning silence, fasts, etc.) that they can weaken discipline. The reason is that although each religious person may fail in a minor matter, transgressing a minor rule; however, a superior who, when he can, neglects to prevent this, fails in a grave matter, causing a relaxation of observance.

[*Latin ed. p. 29*]

And therefore, the superior is bound not only to correct faults among the subjects that endanger the entire community, but also to inquire into them, as taught by St. Thomas [Aquinas], 2-2, question 33, article 2, ad 4; however, without undue solicitude, as noted by [Alexander of] Valencia, book 1, question 15. It is, however, fitting that sometimes the correction be concealed, if the fault does not cause scandal, or if it is foreseen that the

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subject will become worse through the correction, or if a more opportune time is to be awaited. And it should be noted that, if it is necessary to correct, the superior may even chastise the subject with blows and reprimands, according to D. Thomas, 2-2, question 72, article 2, ad 2; provided that he does not act out of anger, nor before secular persons or novices. And just as the superior is bound to correct, so too is he bound to admonish those who are guilty of transgressions, those who have the office of a watchman, as [Alexander of] Valencia states, chapter 11, section 2, question 8, with Suarez, etc.

FOURTH DOUBT. CONCERNING WHAT A RELIGIOUS PERSON IS OBLIGATED TO DO BY VIRTUE OF THE VOWS.

14. Concerning what a religious person is obligated to do by the vow of poverty.

Whether manuscripts, relics, and paintings are the proper possessions of religious persons.

15. Whether they may have a peculium [personal property].

16. What does not contradict the vow of poverty.

17. In what way and how does a religious person sin by receiving or consuming something without the consent of the superior?

18. Whether this excuses from mortal sin by a presumed license.

LIG. Theol. Mor. Vol. VII. B.

[*Latin ed. p. 30*]

19. Whether a religious person sins by using goods for a purpose other than that for which they were given.

20. Whether one can renounce or refuse to accept what is due to them.

21. Whether one can make remuneratory donations.

22. Whether one can make a will.

23. Whether one can give to others what they have taken from things given to them for use.

24. What quantity constitutes a serious matter for a religious person.

25. Whether one sins gravely if they take a quantity, from small to large.

26. Whether an incapable person is obligated to restore what they have taken from things given for use.

27. Whether one sins by borrowing things given for use.

28. Whether one sins by concealing things, so that the superior cannot dispose of them.

29. What if a superior gives permission to spend on shameful or frivolous uses?

30. Whether such permission is inherently invalid.

31. Whether a subject, having obtained general permission, sins against

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poverty, and whether both the giver and the receiver are obligated to restore if they spend on shameful uses.

32. Whether a superior can give permission for something to be used in gambling.

33. Whether a requested permission can be excused and unjustly denied.

34. Whether a recipient who receives something from a religious person without permission can ever retain it.

35. Whether the vow of poverty can be abrogated by custom.

36. Whether an abbess can freely administer the goods of the monastery. Whether she can institute benefices and remove them, as well as confer chaplaincies, etc.

37. Concerning the vow of chastity: here, the matter pertains to the enclosure of religious.

38. To what is a religious person obligated by the vow of obedience? And whether a subject is obligated to obey under a serious penalty.

[*Latin ed. p. 31*]

If the superior does not command something, whether by virtue of obedience or under a grave penalty.

39. Is one bound to those things which pertain indirectly to the rule?

40. Is one bound to those things which are contrary to, or above, the rule? Is one bound to assist those infected with a contagious disease?

41. What if the rule obliges under sin?

42. What if it does not obligate under sin?

43. Are religious bound by new statutes of the chapters?

44. Are they bound to obey superiors who are reforming the rule?

45. Can superiors command internal acts under sin?

46. Does a religious sin doubly by disobeying?

47. Is one bound to obey if one doubts whether the thing commanded is licit? What if one has a probable opinion that one is not bound?

48. Can a religious validly make a vow without the permission of the superior?

49. Is one bound to obey a superior commanding the revelation of a secret?

50. Is a religious bound by the vows made during profession, even if some notable circumstance, not foreseen, should arise? Does a permission obtained from an inferior superior hold, if it has been previously denied by a superior?

51. To which superiors are nuns bound to obey?

52. Can the abbess obligate them in conscience?

53. Can she dispense to them in the rules and vows?

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54. Can she annul vows made with their consent?

55. What of the vows of novices?

56. Further points to be noted concerning the obedience due by nuns to the bishop.

[*Latin ed. p. 32*]

57. Whether nuns are bound, during a visitation, to reveal to the bishop who is inquiring, the transgressions of others.

58. Concerning the confessors of nuns; remissive.

59. Several things to be noted concerning the election of the abbess.

60. Concerning the privileges of religious and nuns. Whether nuns enjoy the privileges of the religious of the same order.

61. And 1st, whether abbesses can grant dispensations concerning fasts, the Divine Office, etc. 2nd, whether nuns can be absolved by the bishop. 3rd, whether all religious can perform the Divine Office during a time of interdict.

62. Whether laypersons can be buried in the churches of nuns.

63. Concerning the privileges of religious concerning the Divine Office.

64. Whether a prelate can limit privileges.

14. "R ESP. 1st. A religious, by the vow of poverty, is obligated to have nothing of his own. By the term 'his own,' are understood temporal goods, which are estimable in price, of which he has renounced ownership, or at least the free and independent power of disposing of them, perpetually. This is clear from Cap. Non dicatis, 12, question 1, chapter concerning the Monachi.

It is said that 1st: temporal goods: because the religious retains ownership of spiritual goods, of honor, of reputation, and the like; also the right of choosing, presenting, conferring a regular benefice, etc. St. Thomas, 2-2, question 186, article 7; Sanchez, 7, 7, chapter 18; Lessius, 7, 2, chapter 4, paragraph 5; Layman, 7, 4, volume 5, chapter 7."

[*Latin ed. p. 33*]

Question: Are these manuscripts the property of the religious? Henno denies this, along with others, in *Controversae Tournenses*, volume 3, page 80, arguing that, as he says, manuscripts are often more valuable than printed books, and that just as paintings and any work of art created by religious, although requiring much skill, yield to religion, so too do manuscripts. However, it is more probable, as Lugo affirms commonly in book 3, number 230; Sporer in volume 3, on sacred relics, page 97, number 149; and Salm in *De Restitutione*, book 22, chapter 2, number 195, along with Pellizari, *Diana Veteranorum*, etc., that manuscripts are something spiritual, since they are the products of ingenuity, even though they are produced through the effort of another, and that they pertain to knowledge,

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which does not fall under the vow of poverty; such is the common custom. Therefore (as we will say in the following verses), from the brief of Benedict XIII, religious promoted to the episcopate must relinquish all goods to their superiors, except for manuscripts. Furthermore, Clement VIII, in Sporer, *loco citato*, expressly declared that religious may freely dispose of their own manuscripts, even without permission. Tourn. agrees with this, *loco citato*; provided (with others) that it is not otherwise defined in the order's constitutions. The same is said of manuscripts by Salm, *ibidem*, concerning relics. As for paintings, if a religious created them with the intention of retaining them, then they belong to the monastery. The same should be said if a religious has converted; because

[*Latin ed. p. 34*]

Such individuals are received only to practice external arts. It is permitted if the conversion involves working on a feast day for one or two hours of the day; thus, Salm. n. 197. If, however, the religious is a chorister, Salm. and Spor. with Bon., Pell., and Diana *apud* Croix, book 4, n. 252, state that if tables, canvases, colors, etc., are provided to him by the monastery, then the paintings belong to the monastery; otherwise, if they are provided by others. It is stated: 3rd, "dominium vel facultatem disponendi;" concerning the religious of the Society of Jesus, who, after having made their vows, can retain and acquire ownership of temporal goods, they do not, however, have the actual right to dispose of or use them at their own discretion, in which consists the essence of religious poverty. Sanch., Laym., book cited, n. 3. It is stated: 4th, "independenter;" because a professed religious can have a peculium that is dependent and revocable at the will of the superior, which is not properly included in his own. Laym., chapter 7, n. 12. 15. Is it permissible for religious to have a peculium with the permission of the superior? And here, the ancient law must be distinguished from the new law of the Council of Trent. Concerning the ancient law, others, such as Gers., Theodor., Felin., Tap., etc., *apud* Sanch., decrees, book 7, chapter 22, n. 4, deny that any peculium is permissible.

[*Latin ed. p. 35*]

To possess [property]. The reason is twofold: first, because this is contrary to natural law, namely, against the vow of religious poverty, since by administering property, the religious person diminishes the principal benefits of poverty; and second, because it is contrary to positive law established by the Church in the Lateran Council, in chapter *Monachi*, concerning the state of monks, where it was decreed: "Monks shall not be received for a price, nor shall they be permitted to possess property." Others, however, more plausibly hold that this is not forbidden by ancient law, as is stated by Silv. v. Abbas, n. 3; Nav. comment., 2, n. 14; Pal., vol. 5, tract. 16, d. 3, p. 7, n. 2; Sanch., loc. cit., n. 5; Salm., tr. 12, c. 2, n. 200, who state that

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this is the accepted opinion, and Pot., de I. præc., n. 1082, says that it is common with St. Anthony, Suar., etc., and B. Umberto, c. 18, in reg., St. Augustine and B. Jordan, lib. 3, de vitis fratrum, c. 15. The reason is that this is neither contrary to natural law, since, although it is contrary to the end of poverty, it is not nevertheless contrary to the vow of poverty, which only obliges religious persons not to use things as if they were their own; nor is it contrary to positive law, since rather the opposite appears to be the case; for in the final canon, *Insinuare*, it is approved that a profession made under the condition of living in one's own house and retaining the administration of goods for one's support is valid. From this, it is inferred that the retention...

[*Latin ed. p. 36*]

Private possessions are not contrary to the vow of poverty, nor to the religious state. Nor does the passage cited in the Decretals (d. c. Monachi) present an obstacle. Indeed, to prevent the canons from appearing to contradict each other, Milante states in his book entitled "Vindiciae regulæ," page 120, that the term "peculium" there should be understood as the appropriation of funds which, at that time, the monks had withdrawn from the common fund, as is demonstrated by Peter of Blessensi and Thomas; and that this was the only thing forbidden by the Council of the Lateran. However, a greater doubt exists as to whether private possessions are forbidden by new law. The first opinion affirms this, and it is held by Pal. d. disp. 3. p. 7. a. 5., Suar. t. 3. de relig. tr. 8. c. 14. n. 8., Pont., q. 9., Scholast. c. 4., Laym. lib. 4. tr. 5. c. 7. n. 13., Holzm. t. 1. de præc. partic. p. 485. n. 616, and Salm. n. 202, with Vasquez, Valent., etc. The Council also strongly defends this position in its treatise on "Disciplina apostolico-monastica," where it speaks with great learning, but it goes too far in condemning those religious who possess even the smallest private possession: it calls them, as P. Carratinus reports (page 81, in another book published against Concina), "sons of wrath, sons of perdition, infamous violators of poverty," and it states that they are in danger of eternal damnation, and are guilty of the most grievous sins, unless they strive to live in the common life, where it has collapsed.

[*Latin ed. p. 37*]

to restore; nor can religious be in good conscience in those monasteries where communal life does not flourish, but rather they ought to transfer to monasteries where communal life is observed, whether of their own order or of another, if the opportunity presents itself; likewise, young men entering religion where communal life has declined, expose themselves to the danger of eternal salvation, and sin grievously; those superiors who accept them, and those who, by counsel or favor, induce them to enter, also sin; and even parents should not, as far as they are able, prevent their

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children from entering, because, as is said, where communal life has been removed, religion is not religion, nor is it a state of perfection, but rather one of confusion and damnation. Thus, the aforementioned author, though a severe judge. But let us come to the question. This first statement is approved by the decree of the Council of Trent, session 25, chapter 2, concerning religious orders, where it is said: "Therefore, it is not permitted to any member of a religious order, whether of men or women, to possess or hold, as their own, or even in the name of the convent, any immovable or movable property, of whatever quantity, even if it has been acquired by them in any way; but rather, they must immediately hand it over to the superior and incorporate it into the convent. Nor shall it be permitted to superiors henceforth to grant to any religious any stable property, even for the use, administration, or management thereof. The administration of the goods of monasteries or convents belongs solely to the officials."

[*Latin ed. p. 38*]

Furthermore, those [items] which, at the will of the superior, may be removed, should pertain to them. However, superiors should permit the use of movable [items] in such a way that the furnishings of their cells are consistent with the poverty which they have professed, and that nothing superfluous is present therein, nor is anything necessary denied to them. But if anyone is found or proven to have retained something otherwise, let him be deprived of his active and passive voice for two years, and let him also be punished in some other way, according to the constitutions of his rule and order. The second opinion, which is held by Nav. comment. 2. n. 15., Sa v. Religio, n. 48., Sanch. l. c. n. 11., Barb. in c. lib. Trid., Cabass. t. j. l. 1. c. 22., de Alex. confess. monial. c. 4. §. 2. q. 1. et 4. cum Pelliz., Rodr., Peyr., Vill. etc. and Milante with others, states that the Council did not establish anything new, but only what was already established by common law. Indeed, the Council (as they say) does not permit any religious to have a peculium with useful dominion, so that it can be disposed of without the permission of the prelate, or at least, it does not permit anyone to have it without a just cause, but it does not prohibit the superior from granting the use of a peculium to a religious, depending on his own judgment, just as he can grant the use of other things in the monastery. However, despite these things, the first opinion seems more probable, considering the sanction of the Council. I am led first by these words: "Nemini..."

[*Latin ed. p. 39*]

It is permissible for [religious] houses, even by the name of a convent, to possess both immovable and movable goods. Therefore, it is not permissible for anyone to hold any kind of property, nor even with the consent of a superior; for otherwise, a monk cannot be said to possess goods in the name of the convent, unless those goods are granted to him by the

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prelate, who represents the convent. But what is said is understood without just cause, it seems entirely gratuitous to assert; all the more so, since it is added that the goods should be immediately delivered to the superior and incorporated into the convent; the word "incorporated" denotes that those goods become common and are destined for the use of the entire convent. Furthermore, I am moved by these words: "The administration of goods pertains only to the officials; but the use of movable goods should be permitted by the superiors in such a way that nothing necessary is denied to them." Therefore, with regard to immovable goods, all administration is forbidden to the religious; and with regard to movable goods, only what is necessary (and not what is for pleasure, even if it is honorable) is permitted to be used; by which word, the administration of even movable goods for indeterminate uses is excluded. And this is confirmed by the words: "lest it should henceforth be permissible, etc.," by which words it seems that the council has established a new law; hence, Laym. l. c. n. 13, infers that the intention (of the council) was to completely prohibit such stable revenues or annual monetary portions. Thus, with respect to the decree of the council. But...

[*Latin ed. p. 40*]

According to custom, which today is almost universally introduced in all religious orders, at least those not reformed, I believe that, along with those who favor the first opinion, as Sanchez, n. 11 and 14; Laym. n. 13; Less. n. 32; Pal. n. 6; Pont. *loco citato*; Salm. n. 240; also Milante, p. 169, with Nav., Barb., Suar., Az., Cab., Silv., Wig., Beja, Lucca, Rodr., Mirand., Cord., de Alex., Lop., Conrad., Passer., Led. and Manstrio, etc., the rigor of the Council is tempered today, and it is permitted to each religious, with the consent of the superior, to have a private allowance to provide for necessary or honorable needs; provided that they are always ready to relinquish their goods at the command of the superior, and that they are sufficiently assisted by them; for otherwise, they are not obliged to relinquish their private allowance, as Salm. says with Sanchez, Less., etc., *in locis citatis*. It is fitting here to note the response given by Cardinal Bellarmine (as reported by Milante in the aforementioned work, p. 245), who, when asked by Cardinal Gesualdo, the Archbishop of Naples, whether nuns, despite the contrary custom, are obliged to observe the exact common life, replied: "If the custom of non-observance is legitimately prescribed, those who have found the religious order in such a relaxed state seem to be excused; for such a relaxed religious order, in which only the essential things are observed, is a true and good religious order; therefore, it can be chosen, and those who live in it are in a state [of grace]."

[*Latin ed. p. 41*]

Regarding perfection. They state that the administration of a private al-

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lowance, according to Palotti, Salm, Pontanus, and Sanchez, is permissible at the discretion of the superior, not only concerning movable goods, but also concerning immovable property, due to custom. This appears to be confirmed by a certain brief issued by Benedict XIII in the year 1724, beginning with the words "Postulat humilitatis nostrae" (and extensively cited by Milante, page 196), in which the Pope, speaking of religious promoted to some dignity, commands that all movable or immovable goods of any kind which they may have in their possession, either personally or through others, at the time of their promotion, must be surrendered to the local superior, except only for their own writings, etc. Therefore, the Pope, although not expressly approving it here, at least presupposes as lawful a private allowance, whether of movable or immovable goods, which religious possess. This concerns the private allowance of both movable and immovable goods. But concerning the private allowance of movable goods, it is expressly approved by Clement VIII, who, as Milante reports, in the year 1602, through his brief to Cardinal Gesualdo, ordered (in the very words of the brief) that it may be permitted to the abbess of any monastery to allow each of the nuns to spend a certain amount from the funds given to those nuns, without it being disbursed through the hands of officials, and without any other burden being imposed upon them.

[*Latin ed. p. 42*]

An account must be given; and this sum shall be that of a single shield each month for minor expenses, etc. However, there, the pontiff commanded that in the future, nothing should be received, either for the habit or for the profession, except under a complete reformation of life in common. But when the nuns again protested against this, Clement issued another decree in which he declared thus: "The nuns who... will be admitted in the future into those monasteries in which stipends are retained, shall in no way be compelled to live in common." Therefore, from this decree of the pontiff, the common life does not pertain to the essence of the vow of poverty, and private possessions are rightly permitted by custom. The same was confirmed for the religious from another brief of Innocent XI, issued in the year 1691, which approved the constitutions of the Order of St. Mary of Mercy, which had already been approved by nine other pontiffs. In those constitutions (dist. 3, c. De voto paupertatis), it was decreed: "We decree that no brother of the professors shall have anything of his own, neither money nor silver vessels, etc., nor shall he spend anything without the permission of his superior... But our brothers must attend that each year, once, they present to their commendators all that they retain in use, and actually exhibit them, leaving their disposition to them, and obtain special permission from the superior to use them.

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Therefore, with permission, they could rightly retain and spend."

[*Latin ed. p. 43*]

Furthermore (that I may express what I think concerning this matter), although I consider the aforementioned second opinion to be probable, indeed more probable, due to the universally established custom; nevertheless, in practice, all prelates are convinced that if the use of personal property is newly introduced into monasteries, scarcely will the name of poverty remain there, and from this, countless evils will arise for the community concerning observance. Therefore, even if they can excuse themselves from a grave sin by granting the use of personal property, with respect to the vow of poverty; they will not, however, be excused for relaxing the rule, to which this concession will undoubtedly contribute. All, however, agree that in those monasteries in which the common life is not observed due to poverty or the negligence of superiors in providing for the needs of the subordinates, personal property may be granted at the discretion of the prelates. The reason is that the Council of Trent then commands religious to live in common, so that nothing necessary is denied to them from the community. Thus, Pot., Fagn., de Alex. I. cap. communiter. From this it follows, as Pell., Val., Lop. and Pot. n. 1078 state, that it does not sin (at least grievously) for a religious person who retains property, not in the common treasury, but in his cell, with the permission of the prelate, depending on the prelate's judgment; because then the substance of poverty is already preserved.

[*Latin ed. p. 44*]

2. It is inferred that the religious cannot refuse the common life, if the superiors wish to establish it, as stated in Alex. c. 4, § 2, question 2, with Suarez, Lessius, Navar, and Potestade, number 1087, in common. The reason is that, although not observing the common life is not contrary to the vow of poverty, to despise the common life is indeed contrary to that vow; for it is to possess goods independently of the will of the superiors. However, Lessius and Peyrart, with Alex. in the aforementioned place, question 111, state that a religious is not obligated to hand over his private property to the superior who wishes to use it for the benefit of the monastery, unless it is clear to him that the superior will adequately provide for his needs from other sources.

3. It is inferred that if a religious is left a legacy with the condition that he possess it independently of the will of the superiors, then certainly the religious will sin against the vow of poverty if he retains it in that manner; but the legacy will be valid in favor of the monastery; for that condition, as being scandalous, is rejected. Thus, Alex. in the aforementioned place, question 5, with Graff and others in common.

16. It does not contradict the vow of poverty that religious possess goods

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in common, even immovable property. (Extravagant, from those concerning the signification of words, and from the Council of Trent, session 25, chapter 3, concerning regulations; Salm. treatise 12, chapter 2, number 164. Potestade, number 1087). However, the Pope, for a just and urgent cause, can transfer such goods to another pious work. (Salm. de loco citato, with Paleari and Lugat).

[*Latin ed. p. 45*]

Indeed, without the consent of the Pope, they cannot obligate themselves before the community, which they will never acquire; because they would prejudice ecclesiastical immunity. *Lugubriter responsio moralis*, book 3, chapter 8. Nor can they apply the fruits or revenues donated by the donor, intended for the purchase of [certain things], to other uses, for example, to pay debts, etc., ibid., chapter 10, section 2. It does not contradict poverty if a villa or other place is given to religious, to be administered in the name of the monastery, and for the benefit of the monastery. Indeed, it does not contradict [poverty] even if an ecclesiastical benefice is given for the benefit or detriment of the religious himself. In this case, he is entitled to the administration of the revenues, which he can apply to his support and other causes, according to the concession of the canons; the remainder belongs to the Church or benefice to which it belongs, and consequently, donations made from the revenues of the benefice for ungodly purposes are invalid and unjust, and those who receive them cannot retain them with a safe conscience. *Suarez*, volume 4, on religious orders, book 5, and *Mollerus*, chapter 267, etc., generally. The reason is that he does not have ownership of said revenues. *Lugubriter de justitia*, volume 4, chapter 4, section 1. Nevertheless, *Wadding* in *Dianae*, page 8, volume 6, response 133, considers it probable that these donations, although illicit, are nevertheless valid; and even more so, he believes, regarding donations made by regular bishops.

[*Latin ed. p. 46*]

In the same passage, chapter 132, and against Sanchez, Suarez, etc. Regarding a monastery, all other things pertain to it which are acquired from sources other than a grant, unless custom yields to the Church. Navar, Azor, volume 1, book 12, chapter 10, questions 6 and 7; Moller, Layman, chapter 5; Trident, session 25, chapter 2, paragraph 3. It is probable, not only by ancient law, but also after the Council of Trent, that a certain income can be assigned annually to a religious person in the monastery or near it, so that he may live according to his needs and wants, but this assignment is revocable at the will of the prelate; likewise, food can be provided to nuns, so that they themselves may provide clothing through their manual labor. Thus, against Azor, Lessius, and Moller, Sanchez, book 7, moral theology, chapter 22; Tann, Layman, book 4, chapter 7, state that such a

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custom, where it prevails, is not to be condemned; however, it should be abolished if it can be done conveniently, and they warn that it should not be introduced without a very urgent reason. Paragraph 17. Paragraph 4. A religious person sins against poverty if he receives, retains, consumes, exchanges, gives to another, or lends, either at home or outside, anything, even things pertaining to food and clothing, without the express, tacit, or presumed consent of his superior. Thus, Lessius, book 2, chapter 41, paragraphs 8 and 9; Sanchez, book 7, moral theology, chapter 19, paragraph 53, and chapter 21, paragraph 32; Suarez, volume 3, on religious matters, book 8, chapter 11; Layman, book 4, volume 5, chapter 7; Azor, volume 3, book 12, chapter 12.

[*Latin ed. p. 47*]

I stated first: without tacit consent; because, if a superior knows that a subordinate is receiving, retaining, or expending something, and does not prohibit it, when he can easily do so, he appears to tacitly consent and approve. Hence, Sanchez, Moral Theology, book 6, chapter 19, says: if in any religious order a custom prevails of receiving or expending something without permission, it is excused by the tacit permission of the superior, who, by tolerating it, reasonably declares the custom. Salm, on Reservations, chapter 6, paragraph 25, with Pal, Pell, Fag, Boss, etc. And if a superior donates to a subordinate, or allows a donation to be made to a subordinate, knowing that the subordinate does not need all of these things for his own use, he is considered to tacitly grant the faculty of donating to others, as Laym notes. However, Lessius cautions that such consent should not be presumed except in small matters and those that occur frequently.

I stated second: or by presumed consent; this applies when circumstances are urgent, and the superior is not present. However, as Sanchez and Bonaventure state, it is not sufficient that the superior would freely grant it if asked (otherwise, all donations from superiors would be permitted without permission, which would undermine the discipline of the religious order); but it is required that he be considered to be granting it, even if not asked, and would not refuse to grant it in those circumstances. However, Suarez and Lessius add that one is excused from mortal sin if the good will of the superior is presumed.

[*Latin ed. p. 48*]

They would grant permission, if it were requested. The reason is that, at that time, it is considered that the matter is held by the authority of the superior, at least virtually, which is hidden in that affection; therefore, if the superior is only unwilling regarding the manner, then, according to Suarez, Sanchez, and Laym, book 5, treatise 5, chapter 7, number 18, a venial sin is committed, but not against the vow of poverty.

Therefore, is it permissible for a religious to alienate or receive something

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with presumed permission? The Doctors commonly affirm that, if permission is presumed, it is sufficient, whether from the actual or virtual will of the superior. Indeed, Lugat writes in book 3, number 125, and Salm in treatise 13, on reservations, chapter 6, number 72, that it is sufficient for not sinning, at least grievously, against the vow of poverty, that the superior does not have here and now a will entirely opposed in substance, even if he is unwilling regarding the manner.

From this, it follows that the religious is at least excused from mortal sin (as Lessius writes in book 2, chapter 41, number 79, and Salm writes in number 71, along with others) if he knows that the superior is so disposed towards him that, if he knew, he would gladly grant permission, or at least would not be greatly opposed. Furthermore, Salm writes in the same place, and Lugat in number 126, that if the giving or receiving would be for the benefit of the monastery. Also, if the superior cannot be easily reached, and there is an urgent need to receive or alienate something, as Contantini of Tournai writes in volume 3, page 81, and Lessius, Salm, and Holzmüller write in their respective works on the subject.

[*Latin ed. p. 49*]

n. 605. Concerning common meals. However, Elaburius, vol. 2, p. 632, no. 664, and Lugo, no. 128, along with Suarez and Sanchez, state that a religious person, after receiving something in this manner, is obligated, if it is convenient, to inform the superior, so that he may then lawfully retain it. Elaburius also says, p. 631, no. 640, that if the superior is accustomed to granting permission for certain things, especially food and drink, then such permissions are often granted; but in well-ordered monasteries, such permissions are not commonly granted, except for very minor and frequently occurring items, as Lessius states in the cited work. These authors teach what is involved when permission is presumed in the present instance. However, a significant question arises: does a religious person sin against the vow of poverty when he receives or gives something with an interpretative or presumed permission, that is, by presuming that the superior would consent if asked? The first opinion, held by Holzmüller, p. 482, no. 599, Elaburius, p. 631, no. 639, Palafox, tr. 16, d. 3, p. 23, no. 8, along with Azorín, Suarez, Valdés, and Navarret, as well as Tolet and Rosell, cited by Sanchez, dec. l. 7, c. 19, no. 15, and Pellizari, Rodriguez, and Bassetti, cited by Salm, de rest. tr. 13, c. 6, no. 67, maintains that such an action does not constitute a sin for the religious person, at least not a mortal sin. Holzmüller, Elaburius, Sanchez, and Palafox argue that this is the case not only if the religious person is certain, but also if he reasonably believes that the superior would grant permission; unless...

[*Latin ed. p. 50*]

(Sanctius concludes.) In some communities, the rule may be observed

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that explicit permission must be requested. This opinion is also taught in *Doctor Thomae*, 2nd part, question 32, article 8, ad 1, where it is stated: "If, however, he does not have a dispensation (from the religious superior) granted to him, because he has nothing of his own, then he cannot perform an act of charity without the permission of the abbot, either expressly granted or probably presumed." The same is stated in 4th book, title 15, question 2, article 5, and question 4, where it is said: "He is not a religious person who is the owner of something when he gives something, placing hope in the approval of the superior." The reason is that permission is sufficient to avoid sin against the vow of poverty, provided that it ensures that the acceptance is not made in one's own name, but with dependence on the will of the superior. This is confirmed in book 46, section 7, on theft (whose words we quoted in volume 1, number 700, see "Quaestio hic"), where it is stated that one is not guilty of theft who receives something, believing probably that the owner will consent, if he had asked. Just as such a receiver, based on the presumed consent of the owner, does not violate justice; so the religious person does not violate the vow of poverty, because, by receiving with the presumed approval of the superior, he already receives in a dependent manner. The second opinion holds that the religious person who receives or gives based on such an interpretative permission sins against the vow, and this is followed by Sanctius, decrees 1, title 7, chapter 19, number 15.

[*Latin ed. p. 51*]

Less. l. 2, c. 41, n. 79; Lug. d. 3, n. 124; Salm. de rest., c. 6, n. 70, *cum Bon., Vill. et Garz*. The reason is that something else must be said, as they say, when permission is required for the propriety of an action, and something else when it is required for its value. For when permission is required for the propriety of an action, the permission of a superior, either through interpretation or through a future ratification, suffices; but when the consent of a superior is required for the value of an action, then the actual or at least virtual will of the superior is absolutely required; and it is not sufficient that the superior would give permission in the future; just as it would not suffice for someone to receive confessions or to eat meat on forbidden days, if a superior were to grant permission. Nor is this the same as the case of theft; for Lugo, n. 127, responds that it suffices for the one receiving the thing to be excused, if he receives it not from an unwilling owner; but for the value of the act of giving or receiving, permission from the superior is required in the present, since such acts are not valid for a religious unless they depend on the will of the prelate. But, notwithstanding this, the first opinion seems more probable to me; and, with all due respect to so many learned Doctors of this opinion, I believe that they have not touched upon the point of the question, in which it is not a matter of value, but of the propriety of the action. For the opponents

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confuse the value of an action with its propriety. For the reason is...

[*Latin ed. p. 52*]

Indeed, the act of a religious is not considered valid unless it has been ratified by the superior; for it is certain (as we have said in *De Contemptu*, book 3, treatise 5, number 769, see above) that for the validity of contracts, the actual or, at least, the virtual will of the contracting parties is required in the present; and therefore, it is rightly said that a priest cannot validly absolve, nor can another licitly eat meat on forbidden days, unless they have a concession from the superiors, at least a presumed concession in the present, because, in truth, a priest does not validly absolve without a jurisdiction conferred upon him in the present, nor does another licitly eat meat on a forbidden day, unless he has already been dispensed from the law. However, the reason given does not prove that the act of a religious receiving something with the permission of a prudent interpretation is illicit and contrary to the vow of poverty. For, as the opposing side admits, it is required that the religious act in his own name and independently of the will of the superior, in order to act contrary to the vow. But he does not act in his own name and independently when he receives something with the consent of the superior, prudently interpreted; for then he truly acts with dependence. Nor does it impede the argument to say that, since the act is invalid, therefore it is illicit; just as a priest illicitly absolves when he does so with a presumed faculty from the bishop for the future, because he absolves invalidly. But the reason for this case is different from the case of *casus*.

[*Latin ed. p. 53*]

Here: for there the honesty of an action depends on its own validity; but here, the honesty of the acceptance does not depend on its value, but depends on acting properly and independently. This alone harms the vow of poverty; and thus, in our case, an act of accepting could rightly be licit here and now, if it is done dependently on the presumed consent of the superior, even though it is invalid here and now and would be if the superior did not assent: just as someone, in good faith, who enters into a marriage contract with an impediment, legitimately contracts, even though the marriage is invalid. Furthermore, it does not impede to say that, if our opinion were put into practice, room would be given for relaxation; for it would scarcely be the case that a subject could not easily presume a concession of license, if he asked, at least from superiors of higher rank, if a lower superior refused. But it is answered first that, in such acceptances based on presumed license, those accepting are, for the most part, not excused from venial sin, since superiors are usually unwilling as to the manner, if not as to the substance. Furthermore, it must be noted that such licenses are not easily presumed, unless there is certainty, or at least a certain probability, of their concession;

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as Tourn. correctly notes, 4.3, p. 81, that one must be extremely careful not to presume what should not be presumed, indeed, not even those things that are before the eyes of the superior, from *LIG. Theol. Mor. T. VII. C*.

[*Latin ed. p. 54*]

It should be considered that such a thing is tacitly approved; for superiors are usually reluctant to tolerate more than they see being done contrary to their will. Furthermore, licenses which are denied by lower prelates can scarcely be presumed to be granted by higher ones; indeed, in order to maintain just governance within the community, they scarcely grant what is denied by those below them. Therefore, they are unwilling to presume to grant such licenses, even in substance. For if the matters are of little importance, since higher prelates do not interfere in such minor cases, there is no prudent reason to presume their granting; but if the matters are of great importance, concerning which (as Holzm. states in n. 602) a license presumed is not sufficient, otherwise an opportunity would be given to receive and retain things of even greater importance without express permission, which would be a grave detriment to religious poverty.

19. § 5. You sin against the vow of poverty if you expend anything granted to you for use on something else, or if you culpably lose or destroy it with mortal sin. The reason is that you have only a limited use of those things, and that is on a precarious basis, as long as it seems good to the superior; and the act of destroying something at your own discretion is an act of dominion. (Sanch. c. 19; Laym. n. 6; Less. n. 79.)

20. Note that:

[*Latin ed. p. 55*]

He cannot grant forgiveness, nor remit debts owed to him, according to the common opinion with Salmeron, tractate 13 on restitutions, chapter 6, number 21; nor can he renounce legacies left to him, or debts owed to him for his labors, because the right to these things is immediately acquired by the monastery, as Sanchinez says in book 7, chapter 12, number 55, and in De Alexandro, chapter 4, section 2, question 7. However, a religious person can refuse gifts; for the vow of poverty obliges one not to alienate what has been acquired, but not to refuse to acquire what has not yet been acquired. Thus, Sanchinez, in decisions, book 19, number 75, and Salmeron, ibid., number 23, with Lugo and Pell. From this, you can rightly ask a religious person who wishes to give *centum* to a religious, that he give it to your relative or friend; Salmeron, ibid., with Lugo, Trull, Sanchinez, etc., and Tournhem, volume 3, page 80, number 10, who adds that a religious person who, without just cause, refuses to accept what is offered to him, sins against charity, hindering the good of his religion, but not against justice.

21. Note the following: A religious person can, without license, make

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remuneratory donations from goods granted to him for use; because such donations are like the payment of debts. Salmeron, in the aforementioned place, with Rodriguez and Villalobos. Indeed, he can give more than he receives, up to the excess of a fourth part, as Salmeron says, ibid.; because gratitude demands that always more be returned than was received, as Sanchinez, Bardesano, Navar, and Diana say, citing St. Thomas, in Salmeron, book 13, chapter 6, number 92.

[*Latin ed. p. 56*]

22. It must be noted, thirdly, that although a religious cannot, in any way, make a will, as is the common practice, as stated in the Decrees of the Council of Alexandria, book 1, chapter 4, paragraph 1, question 2, if, however, he requests permission to bequeath something after his death, and the superior promises to fulfill this, as stated in the Decrees of the Council of Alexandria, book 3, chapter 11, then the superior is bound by his promise. Just as if a lord promises something to a servant, he is bound to fulfill it, as taught by Lessius, Molinæus, and Sanchez, book 7, chapter 9, number 13.

23. Question: Here, firstly, can a religious person give something away without permission, something that he obtains by living more frugally from things that are granted to him for use? Valerius, Rodriguez, Aragona, Silva, Diana, and others, state this in Salm, book 2, chapter 6, number 26. However, although Salm himself considered this probable, it is only if it concerns things that are consumed by use, since in such things, use and ownership are scarcely distinguishable. Nevertheless, it is more probable to say that, if a certain quantity is assigned to the religious person for his sustenance, in such a way that neither the monastery is obligated to provide him with anything else, nor is he required to account for it, then, whether he resides within the cloister or outside, he may freely dispose of whatever he has taken from that portion, provided that he does so for a legitimate purpose. Otherwise, if no certain quantity is assigned to him, but all necessities are provided by the monastery, then, because, as in the first case, it is not presumed that the superior...

[*Latin ed. p. 57*]

To grant permission. Thus, Sanchez, Decis. l. 7, c. 19, n. 100 and 101, Salmeron, l. c., with Abulafia, Palafox, Garcia, Molina, Villanova, and Holzmeister, n. 615, and others, in common. Furthermore, it is commonly permitted to religious persons who live outside the convent with due permission to make moderate alms from those things which are provided to them by the monastery or by others for their sustenance. Also, it is permitted to religious persons to give to whomever they wish their own possessions which are granted to them, such as eggs, meat, etc.; thus, Silvestro, St. Antoninus, Aragona, etc., with De Alexandro, c. 4, § 4, q.

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5: unless the superior expressly forbids it. Moreover, it is permitted to them to help a poor person suffering from great poverty from the goods of the monastery when access to the superior is not possible; also, it is permitted to make small donations to friends and relatives as a sign of gratitude or debt of friendship, or to foster the love of others towards the religious order. Thus, Salmeron, n. 31, and Croix, l. 4, n. 123, with Suarez and Palafox. Bordelon, in his treatise on religious poverty, cap. 20, n. 32, also permits religious persons to give something to eat or drink to the poor; because in these matters, the prelate is presumed to consent.

24. Question 2. What quantity is required so that a religious person, by spending it without permission, commits a grave sin? Navarret, Azorín, Graff, etc., Palafox, tr. 16, d. 3, p. 20, n. 3, Sanchez, lib. 7, c. 20, n. 3, assign as the matter for a grave sin.

[*Latin ed. p. 58*]

Four silver coins: indeed, more for richer convents, and even more if the object is not taken from money, but from clothing, books, and the like. From Lug. de just. d. 3. n. 173, for convents of moderate wealth, seven or eight silver coins are assigned, if the object is taken from a religious person from items designated for his use; and more, if the object is stolen for personal use and remains within the community. However, if the object is stolen from the common property of the monastery and given to outsiders, he considers six silver coins to be a grave matter. However, Led. and Cenedo, in the aforementioned Lug. n. 170, require more; for they believe that it is not a mortal sin to take eight or nine silver coins from objects that are not consumed by use, provided that this does not happen more than once or twice in a year. Others, as Sot. and Rodr. in Salm. d. n. 47 (and Arag. considers it probable), say that two gold coins are required for a grave matter. Finally, concerning the gravity of the matter, others believe, as Rebell., Fag. etc. in Croix l. 4. n. 133, that the same should be said of the thefts of religious as is said of the thefts of children, according to what is stated in VII. prec. n. 543. And Holzm. n. 595 and Elb. p. 633. n. 646 agree with Henno and others, saying that religious persons who steal, committing a grave matter, unless the theft results in serious damage to the monastery, will indeed sin against the vow of poverty, but not against justice; therefore, they will not be.

[*Latin ed. p. 59*]

They are bound to restitution. But it is more probable to deny this, namely, that it is required of religious persons to commit a grave sin, in order to steal the quantity that is required from laymen; thus Lug. vol. 3, no. 172, and Sanch. dec. l. 7, c. 20, no. 3. The reason is, firstly, because laymen are considered as being in the hope of inheriting the goods of their parents, but not religious persons, who cannot succeed to a monastery;

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secondly, because parents are unwilling in the thefts of their children, with respect to temporal detriment, but prelates are unwilling in the thefts of religious persons, even with respect to their spiritual detriment: hence, it is more easily presumed that prelates are unwilling concerning the thefts of religious persons than parents concerning the thefts of children; all the more so, because laymen are well able to possess things, but religious persons are not, since they are bound by the vow of poverty. But when something is given to a religious person from the same community, certainly more is required, as Salm. no. 47 states, along with Suar. Hence, he says there, "Coriolanus," that a donation of 12 *regalia* from things conceded for use was not a grave matter; Led. extends it to twenty silver coins; indeed, Lug., Sanch., Pell., Rodr., and Anton. a Sp. S. apud Salm., l.c., say that if the thing is not money, nor even of the value of 5 gold coins, then it is not a grave matter. But if something is taken from outsiders, to be given by others, still more is required; then...

[*Latin ed. p. 60*]

For Garcia, with Pal., Leand., Dian. et al., in Salm. n. 47, assign a greater value for a grave matter, namely 60 silver coins. However, it is not gravely sinful for a religious to secretly receive something, for example, a book, for temporal use, even for a long time, but not perpetually; because in that case, the superior is not considered unwilling in substance, but only in manner. Thus, Salm. n. 49, with Suar., Az., Pel., Vil. et al., 25. Quær. 3º: Does a religious gravely sin by receiving things little by little without permission, if the thefts amount to a large quantity, and is he bound to restitution? Nav., Tol., Fill., Gran., Rodr., Dian. et al. deny this, and Pelliz. calls it probable; Lugo also agrees, judging it rare that a religious, by taking small things without the intention of reaching large amounts, gravely sins; because superiors are never gravely offended by such actions. Nevertheless, Salm. de rest. c. 5. n. 53, with Sanch., Bon., Vill., Garc. et al., more truly affirm that, although they require a greater quantity for a grave matter, these small thefts do not coalesce if there is a large interval between them; however, Sanch. requires a space of a year for this to be considered large, but Salm. d. n. 55, *in fine*, with Fill., Dian., Garc. and Ant. a Sp. S., believe that a shorter space is sufficient.

[*Latin ed. p. 61*]

Month. V. Concerning theft, n. 530. Furthermore, Salm. n. 58, along with Sanch., Pal., Bon., Lug., Pell., etc., state that it is not a mortal sin to repeatedly steal food items, even if they amount to a large quantity, provided that they are not reserved for religious use (as stated in Salm. n. 57), and provided that the damage to the community is not excessive and occurs in an extraordinary and more valuable matter, as noted in de Alex. cap. 4, § 1, q. 5, with Suar. Reason: because it is presumed that tacit permission from

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the superiors is present in such cases. 26. Question 4. Whether a religious person who is unable to repay a debt to their monastery is obligated to take something from the items given to them for their use. Lug., Bon., etc., affirm this; Pell., Fag., Leone, etc., deny it. And it is considered probable by Salm. n. 236, because it is not presumed that the superiors intend to obligate the subordinate with such a burden. And it is truly probable, if the items given are for necessary use. 27. Question 5. Whether a religious person sins if they lend, without permission, items that have been given to them for their use. They affirm; but not grievously, if they are certain of the restitution, as held by Laym., Sanch., Peyr., whom Dian follows in r. 14, and in de Alex. c. 4, § 1, q. 9. 28. "6. Furthermore, you sin if you conceal anything, thereby depriving your superior of its free disposal. Nor can procurators, economists, administrators, or lower prelates do anything."

[*Latin ed. p. 62*]

It is forbidden to expend anything contrary to the rule of the Order, unless the superiors permit it, or custom demands it. The reason is that they are not the owners of the common goods, but only administrators. Laym. n. 8, from S. Th. » 29. » 7.º If a prelate permits a subject to expend goods, whether derived from any cause or title, on frivolous, shameful, or illicit uses, or on superfluous, extravagant things that are unbecoming of their status, both the prelate and the subject sin against the vow of poverty; and such a donation or alienation is invalid and subject to restitution; Nav., Silv., Val., Mol. t. 2. d. 276., Azor., Less. d. 9., Sanch., Laym.: because the prelate cannot grant forgiveness greater than that which he himself possesses; but he, since he is not the owner, cannot expend the goods at his own discretion and uselessly; but only for the necessity and benefit of religion. V. Lug. de just. d. 3. s. 7. n. 11. » 30. On this point, the question is whether a license granted by a prelate to a religious to expend something expressly for illicit uses is valid in itself. Some affirm this, including Bus., here Nav., Pal., Sanch., apud Croix l. 4. n. 114., and they maintain this absolutely, Salm. de rest. c. 6. n. 82., with the common opinion, as they assert. The reason is that the prelate is not the owner, but a simple administrator of the monastery's goods. However, Salm. n. 83., with Pal., Suar., correctly concede...

[*Latin ed. p. 63*]

Furthermore, a valid license is given for retaining superfluous things without notable excess; otherwise, the matter would be subject to great scruples. However, Lugo, in *De Justitia*, book 3, chapter 137, with Lessius, Azorín, Taberna, Silvestro, Turrecremata, Fabius, etc., apud Croix, *loco citato*, hold that the license is valid, even if illicit: for, they say, if a superior granted a license to purchase superfluous things, who would say that the purchase is invalid? Elbing, number 666, and Holzmüller, number 604, with Illes, also hold this opinion, saying that it is sinful for one who

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has superfluous things by license, indeed, to sin against poverty, since the vow of poverty obliges not only to accept things with license, but also not to have superfluous things; but it is not sinful against justice, nor is one the owner when he has things with a license, which is not held to be invalid by any law, unless it turns into a grave detriment to the monastery. I do not dare to entirely condemn this opinion, because of the authority of so many learned Doctors. But the first opinion entirely pleases me; for, as Lessius says in book 2, chapter 41, number 79, and as Salmeron says in number 85, and Roncaglia in conference 25, number 4, and many others, the superior is not the lord, nor does he have any power over the goods of the monastery except in so far as the canons and religion grant it to him: but it cannot be said that he has the power to grant a license for illicit or superfluous uses, nor do the sacred canons, since from them...

[*Latin ed. p. 64*]

The contrary may be deduced, as is stated in Clement I, concerning the state of monks, where all superfluous things are expressly forbidden, nor is religion ever considered to permit this, to the detriment of the spiritual well-being of its sons. 31. 2. The question is whether, if a prelate grants a general permission to a religious to spend a certain sum at his discretion, if he spends it on shameful or frivolous things, does he sin against the vow of poverty, and is he obligated to make restitution, both himself and the recipient? The first opinion affirms this. The reason is that the superior does not intend to grant permission for illicit uses at that time, nor could the superior himself grant such permission, since he is merely an administrator. Thus, Silv., Pal., Mol., Sanch., etc., apud Croix, book 4, number 113. And Salm., in *de restitutione*, chapter 6, number 85, considers this opinion to be more probable, and Lugo calls it the common opinion, book 2, number... According to this opinion, Sanch., Pell., Mol., Reb., etc., with Salm., ibid., number 106, say that he who has received something improperly from a religious has already made sufficient amends if he restores the thing to the religious, because he puts the thing back in the same state in which he found it; provided that he (Salm., ibid., with citations of Doctors) does not fear that the religious will abuse the thing. However, the second opinion contradicts this, and de Alex., *conf. mon.*, chapter 4, section 4, question 9, with Bord., Suar., Bann., Lopez, hold this view.

[*Latin ed. p. 65*]

Hurtado, Medicina, Pellicio, Rebellio, Salas, etc., in Salm., n. 84, vocant hanc opinionem ”probabilem”; Lugo, in d. 3, n. 137, et Dianus, Sayr, Macius, etc., eam ”probant”; et Croix, in loco citato, adhaeret ad hanc opinionem, dicens quod non obstet quod superior non sit dominus; nam respondet cum Rebellione, quod monasterium est dominus, ut possit disponere de bonis suis ad omnes usus, et saepe præsumitur monasterium

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consentire quod subditi expendant in quibusvis usibus, si hoc maluerint, quod generaliter est eis concessum ad expendendum, ne periclitetur fama subditi aut superioris, ut dicit Rebellio. Deinde dicit Lugo, quod licet superior sit simplex administrator, tamen scitur suam potestatem esse restrictam ad solos usus licitos concedendos. Et, ut dicunt Bannus, Lopus, Rebellio, et Salas apud Lugonem, n. 142 (et hoc ipse non putat improbabile), non est censendum quod superior, dans licentiam, eam limitet tantum ad usus licitos; quia ipse, dando licentiam generalem, vult et potest tollere impedimentum quod subditus habet ex licentiæ defectu ad expendendum. Pari modo ac si pontifex dispenset cum consanguineis ad matrimonium, non solum dispensat ad actum conjugii, sed tollit malitiam incestus etiam quoad copulam illicitam, (ut tenent Lugo, n. 133, et Sanchez, de matrimonio, l. 7, d. 67, n. 8, cum Metano, Gutierre, Manuale, Ledo, Llamas, etc.: modo episcopus, cui...

[*Latin ed. p. 66*]

The dispensation has been granted, and it has already been dispensed; as Sanch. rightly says, number 9, against Major and Gall. cited by Croix. Furthermore, if the Pope grants a dispensation to eat meat during Lent with a certain condition, if that person eats harmful meats, he will certainly sin from intemperance, but not against the precept of fasting, which has already been removed by the dispensation. (But regarding these matters, the decree of Clement XI, mentioned in the treatise on fasting, number 101, presents an objection. See the question here.) Thus speaks Lug. number 133, along with others, as mentioned above. But, despite these considerations, although I do not dare to condemn this opinion, I embrace the first one; because it is not sufficiently proven to me that the superior has the power to grant such a license, either special or general, for illicit uses, as I will explain shortly in question number 50, or that the monastery consents to such licenses to the detriment of the souls of its subjects. However, Salm. number 86, along with Pal. and others, grants an excuse from restitution to the one who received something from a religious person for an immoral purpose, when the honor of the religious order or of the religious person themselves would be endangered; or, for example, if a woman received something from a religious person for an immoral reason, and the religious person changes his mind and intends to give it freely, because the woman is poor, or to prevent her from suffering damage to her reputation; then, in that case, it would already be used for an honest purpose. And from this, when a woman receives something of this kind...

[*Latin ed. p. 67*]

A religious person can reasonably presume consent, and, at least on this point, will easily be excused. Thus, Psalm 32:3. The question is whether a superior can grant a subordinate permission to wager a certain *summa*

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in a game. It is certain that he can, if the *summa* is modest; in which case, the subordinate can use the permission, even if it is tacit or presumed. Lessius, Molinet, Azorín, etc., with Salm, *de rest.*, chapter 6, paragraph 94. As for the amount, some say that a religious person can wager as much as he could freely give; others say 4 or 5 gold coins per *centum* annually, for those uses to which he is permitted. However, the game must be licit, not illicit, as are games of chance, lotteries, and all games based purely on chance, according to the Council of Trent, session 22, chapter 1. Furthermore, in some religious orders, it is permitted by custom to wager a modest *summa* with playing cards, as Salm, paragraph 95, states, with Peyrère, *Dictionarium*, etc. See also *dicta de ludo*, paragraph 873. It is doubtful whether a superior can validly grant a subordinate a specific permission to wager a large *summa* in a game. Lessius, *locus*, 2, chapter 26, paragraph 36, affirms this, with Hurtado, Salas, and Amic, apud Salm, *locus*, chapter, paragraph 96; because any license to enter into a contract that is, in itself, just, is valid in itself. However, Salm, there, with Sánchez, Ledo, Diclar, and Villalón, argues to the contrary; because, they say, a simple administrator, such as...

[*Latin ed. p. 68*]

The superior of a convent cannot grant permission to religious to enter into such contracts on their own behalf, except to those lords who can freely dispose of their possessions. But what is to be said if the permission is given generally? This question is included under question 2, as mentioned above, which you can read. As for whether a religious person can gain more from gambling than they lose, see numbers 874, 33, and 4. The question is whether a permission requested, but improperly denied, excuses from transgressing the vow of poverty. Answer: It does not excuse, unless there is a serious danger of loss imminent; for then it is presumed that the consent of the superior is present. And if even then the superior denies permission, it may sometimes be judged prudently that the law, or the vow, does not bind in such a circumstance. Thus, it is probable according to Pal. d. 3. p. 23. n. 10., Holzm. p. 484. n. 610., with the common opinion and from Alex. c. 4. §. 3. q. 6. And this is in good agreement with the teaching of D. Th. 1. 2. a. 6. in fin., who, speaking of the law, says: "If there is a sudden danger that does not allow for such delay that one can appeal to a superior, then necessity itself has an attached dispensation; for necessity is not subject to the law." The same must be said of a vow, which is a certain particular law, and whose obligation does not apply when such a danger is imminent. But Holzm. notes, with Pal., that the permission denied excuses, if it is due, as also...

[*Latin ed. p. 69*]

34. 5. The question is whether a religious, acting solely on his own au-

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thority, can grant something to another, when, had the superior known, he would not have granted the license. Molinius, in Disputationes, 209, and Alexander, in his work, question 7, respond that one must consider the disposition of the superior. For, if it is presumed that the superior would entirely revoke the license, then the license is not valid; otherwise, it is to be said that, even if the superior had initially refused the license had he known the circumstances, the license is valid if, in the present situation, it is presumed that the superior would not revoke it. In cases of doubt, the validity of the act, that is, the license granted, is presumed; understand this, if the superior cannot be reached.

35. 6. The question is whether the vow of poverty can be abrogated by custom. Generally, the Doctors of the Church deny this concerning the substance of the vow; however, they affirm it concerning the manner. Such a custom is considered just when it is widely practiced by religious, even those who are fearful, and who are aware of the situation and do not contradict the superiors, when they are easily able to contradict. Thus, according to Alexander, chapter 4, section 1, question 16.

36. 7. Regarding nuns, the question is whether the abbess has the administration of the honors of her monastery. The response is that she does, unless the rule or custom prohibits it. Furthermore, she cannot grant a license for making immoderate donations, as stated by Alexander, chapter 11, section 1, question 11.

[*Latin ed. p. 70*]

Although Saint [Alphonsus] says, "It is well that alms be given from superfluous goods," nevertheless, even without the consent of others, it is possible to distribute superfluous goods for alms, but one is not obligated to distribute superfluous goods for alms, if these are applied to increasing the church, or the dwelling, or the revenues of the monastery, so that the monastery may be able to support more religious sisters, or so that the common life may be better maintained, as [Alexander of] Hales holds, *loco citato*, chapter 23, against others. However, the abbess, when distributing goods to her subjects, must consider the necessities, not the dignities, of persons, nor her own advantage, as [Pierre of] Poitiers states with [Alexander of] Hales, chapter 13. The abbess may, in minor matters, enter into contracts herself, but in more serious matters, the consent of the chapter is required, as is known from what was said by the Prelate; especially if money is received on loan which is then not applied to the benefit of the monastery; otherwise, the monastery remains not obligated, as [Tapestius], [Bardulf], and [Alexander of] Hales state, chapter 11, section 1, chapter 16. However, with the consent of the abbess and the chapter, the monastery must stand by the contract, concerning at least the greater part of the obligations, according to the chapter on known orders. Whether, however, a remission of debt or a renunciation of a legacy made by the abbess and the

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chapter is valid, [Alphonsus], [Lugovius], etc., state with probability, with a just cause intervening, according to [Alexander of] Hales. But [Alexander of] Hales himself, with equal probability, in chapter 11, section 1, chapter 17, with [Bonaventure], [Mollerus], etc., denies; because...

[*Latin ed. p. 71*]

Nuns cannot harm the monastery, which has already acquired the right to its property. Therefore, it is said that the abbess and chapter cannot alienate the immovable property of the monastery (nor precious movable goods that can be preserved); nor can they lease it for more than three years; nor can they dispose of goods already incorporated into the monastery, unless the matter is contentious or prejudicial; nor can they pledge them, unless necessity demands it and there is no time to appeal to the Holy Congregation; nor can they impose a tax or mortgage upon them, as stated in Alexander III, chapter 11, paragraph 1, question 14, with Navarret, Quatremère, and others; nor can they receive money for exchange with the cessation of profit, as decreed by the Holy See, ibid.; nor can they alienate flocks or cattle necessary for the cultivation of the monastery's fields; but they can, indeed, dispose of the produce of the flocks. Suarez, Alexander III, ibid. However, an exception is made if the matter does not exceed the value of 25 Roman monetary scudi, and if the alienation is clearly to the benefit of the monastery, or if the thing is useless to the monastery. See other exceptions in Alexander III, chapter 11, paragraph 1, questions 18 and 19. The abbess can also institute benefices and chaplaincies, only with regard to the title and possession, but not with regard to ecclesiastical power, as stated by Gonzalez, Felino, etc., with Alexander III, chapter 11, paragraph 1, question 8. Thus, although she cannot suspend her own clergy, she can nevertheless deprive them of the title and possession of benefices; because, once possession is removed,

[*Latin ed. p. 72*]

It is considered that the Pope also removes spiritual jurisdiction. Thus, Alexander, with Paschal, can also remove a chaplain for a just cause, even without the patron's consent. See Alexander, ibid., 37. "Response 2: The religious person is bound by the vow of chastity, to abstain from all voluntary, internal and external, venereal pleasures; therefore, if anyone sins against chastity, he commits two sins, namely, that of lust and sacrilege. Lessius and Layman, chapter 7. (And it is most probable that he also sins against the common good, if there is a danger that, through his sin, religion is dishonored. Salm, on the state of religious life, chapter 6, paragraph 26, with Pell, Dian, etc.)."

"For greater protection of chastity, enclosure has been introduced, not only for nuns, but also for religious persons who cannot leave the monastery without the permission of the superior. Thus, from the

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constitution of Clement VIII, which begins, 'No one' (according to Cherub, in his bull, number 60), where it is written: 'No one shall dare to leave the community, except for a reason and with a companion, and with permission obtained each time from the superior; who shall not grant it otherwise than if the reason is proven, and a companion is added to the one who is about to leave, not at the request of the one asking, but at his own discretion, nor shall he grant it frequently. No general permission to leave shall be granted to anyone.' But here, the question arises: what sin is it to leave without permission? Commonly, the Doctors of the Church, as Spor says, volume 3, page 100, paragraph 158."

[*Latin ed. p. 73*]

When Pellican, Leza, and others assert that such an action is mortally sinful, it is because the custom of all religions dictates that such departures, considered as grave faults, are always punished. However, it is reasonably held, as Anaclarius states in *Itinerarium*, 35, concerning the state of monks, number 69, and as Spuria writes in the aforementioned work, along with Navarrus, Bardesanes, Mirraeus, Pellican, and the common opinion (contrary to Suarez), that a religious person does not commit a grave sin by leaving their enclosure once or even twice during the day without permission, unless they do so out of contempt or with scandal; otherwise, a different judgment must be made regarding nocturnal and furtive departures.

Regarding excommunication for violating the enclosure of religious or nuns, see what is said concerning censures, book 7, number 239, 38.

"Response 3: A religious person, bound by the vow of obedience, is obligated to do all that the superior commands, according to the rules and constitutions of the order, whether directly and expressly, or indirectly and implicitly. Indeed, if the command is given in virtue of holy obedience, in the name of our Lord Jesus Christ, or in a similar manner, it is binding under a mortal penalty; because the intention is to obligate as much as possible. However, if another form is used, or if no form is used at all, it is binding under a venial penalty; which custom has been approved in the Society of Jesus. See Vasquez, *Summa Theologica*, 2, 2, question 104; Silvestrius; Sanchius, book 6, moral chapter 1; Lessius, book 2, chapter 4, section 4; Layman, chapter 9. Note that, unless the superior explains the command, for example, by saying "I command," "I order," etc., the subordinate is not bound to obey; thus, Salmeron, ibid., number 47."

[*Latin ed. p. 74*]

"With Suarez, Paley, etc. And if the prelate says — 'I command,' 'I order,' etc. — the subordinate is not even obliged to obey under a grave penalty, as taught by Sanchez, Decrees, book 6, chapter 4, number 26, with Medel, Vasquez, Suarez, and de Alex, Conferences of Religious, chapter 6, section

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5, question 14; unless it is added: 'in the name of Our Lord Jesus Christ,' or: 'by virtue of obedience,' or unless the penalty of excommunication is added, not only of being imposed, but also publicly declared, as say Navar, Vasquez, and others, with Alex, ibid.)"

"39. Furthermore, those things which pertain indirectly to the rule, and some others, extend to those things which contribute to its fuller observance. However, Sanchez restricts this to matters that are very necessary, without which the rule cannot be conveniently observed; otherwise, the superior could order any kind of bodily penance, since those things are ordered for the fuller observance of the rule. Layman, book 4, treatise 5, chapter 9; Lessius, book 2, chapter 4, section 9."

"1. The subordinate is not obliged to obey in those things which are: either contrary to the rule, unless the superior can dispense in that matter, and a legitimate reason for dispensing exists (hence, it must be proven that the prelate dispensed without a cause, so that you are not obliged to obey, as stated by Salmeron, on the status of religious, chapter 5, number 72, with Paley, Peyre, and others); or which exceed the rule, such as very great penances (unless as a penalty or to fulfill necessary vows); or to accept..."

[*Latin ed. p. 75*]

Episcopatus: (Thus Salm, with common decree 5, n. 77: or that he accept a benefice, whether curatial or simple; Salm, n. 78: or that he go to infidels with manifest danger of life or servitude; Salm, ibid., n. 73, with others. However, he is bound to accept a charge within the order, if the prelate commands it, commonly Salm, n. 79; even if a pact to the contrary precedes; because the pact is rejected as shameful, as in Alex., c. 6, § i, q. 10, with S. Th.). Dian., p. 6, tom. g., ros. 33, and others, six: or under the rule, that is, vainly (unless commanded for a reason that is according to the rule, e.g., to exercise obedience). It does not matter that the rules command obedience in all things; for this is understood not of the obligation of a vow, but of the perfection of obedience. Thus Suar., Sanch., 6 moral, c. 2, and Laym., 40. But is a religious bound to obey a prelate commanding him to assist the sick afflicted with a contagious disease? The answer is affirmative, if the sick are religious of the same monastery or order; because this pertains to the common good of the community itself, that they assist one another. Otherwise, if the sick are outsiders: unless there is no one to administer the necessary sacraments to them; because then they must postpone temporal life to the spiritual salvation of their neighbors. Thus Sanch., dec., l. 6, c. 2, n. 57, Pal., tr., 15, d. 4, p. 4, n. 7.

[*Latin ed. p. 76*]

Elb. vol. 2, p. 625, no. 624, and Spor. vol. 3, p. 101, no. 163, with Caj., Lez., Rodr., and common opinion 41, no. 2. If a rule of the order obliges under pain of sin, its transgression is against a vow and sacrilegious. The

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reason is that such a rule is no less obligatory than the command of a superior, and the subject, by promising to observe the rule, is considered to obligate himself in the manner in which the rule itself intends to obligate; therefore, for example, a Carthusian eating meat, or a Franciscan not fasting on Saturday, sins against obedience and against temperance. St. Thomas, 2nd part, question 44, article 3; Valent.; Sanch., moral, chapter 1 and 4; Vasquez; Rodr.; Laym., loc. cit., no. 6; Escob., etc. 42, no. 3. If a rule does not obligate under pain of sin, the transgressor of that rule does not sin against the vow of obedience. The reason is that such a rule does not properly contain a precept, but is only an order or a warning, obliging only to a penalty, if one is imposed: St. Thomas; Laym., loc. cit., etc. Therefore, neither is the transgression of it, made for a reasonable cause and a good end, or from a motive of virtue, a sin; for example, if one speaks outside of the prescribed times with a brother, in order to console someone who is grieving. However, it will be venial if it is done out of negligence, dullness of mind, or some other disorderly affection. Thus, St. Thomas, 2nd part, question 186, article 9, ad 1; Sanch., loc. cit., chapter 4, no. 14; and Laym., book 4, title 5, chapter 9, no. 8, with Vasquez and Valentinus; whom, for the most part...

[*Latin ed. p. 77*]

Valentinus, Sanctius, and Suarez concur, and therefore they hold that it is rarely the case that someone is entirely free from all fault; and they add that if someone frequently and almost habitually transgresses the rule, they gravely disturb the religious discipline, and for that reason place themselves in danger of expulsion, and sin mortally. Layman, book 5, chapter 9; Sanctius, number 8, number 4.

Even though chapter members may establish a new statute by which themselves and others who will later make profession are obligated; nevertheless, those who have already made profession and who did not consent to it are not bound by it, if it does not directly or indirectly pertain to the rule; Layman, book cited, number 10.

Unless, however, the statute is made in a general or at least provincial chapter (according to the constitution of each order), with the majority of votes present, and is not contrary to the rule. See Escobar, *De Legis*, book 1, chapter 12, number 15. The reason is because that which concerns all ought to be approved by all, according to rule 39, in 6. Layman and Sanctius, from Silvestri and Azorín, volume 1, book 13, chapter 11, question 19; Lessius, book 2, chapter 14, number 22, add that the Pope cannot compel religious to a stricter way of life than that which the original foundation of the institute demands; because the obligation of obedience, even to the Pope, arises from the vow which was made according to the proper constitution of the rule.

However, if the reform of the rule were a necessary means for the preser-

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vation of the order, the prelate, together with the chapter, *Liguori, Theologia Moralis, Tomus VII*.

[*Latin ed. p. 78*]

And the pontiff can, moreover, compel them to do so, when everyone is considered to have implicitly obligated themselves to this. Silvester, Lessius, Sanchez, and Layman, *loc. cit.*, chapter 44.

The question arises: Are religious bound to obey prelates who are reforming a collapsed rule? It is certain that, after the rule has been relaxed by legitimate custom, although the first religious may have sinned, the second are not bound to observe it, as Salmeron rightly proves in *De Leg.*, chapter 6, paragraph 39, and as Sanchez teaches in book 6, chapter 2, paragraph 26, etc., and in *De Alex.*, *Conf. Mon.*, chapter 1, section 2, question 3, along with Cajetan, Turrian, Palotti, etc.

However, it is doubtful whether, if the rule is reformed by the general chapter, those who have made their profession are bound to obey. This is affirmed by *De Alex.*, *Conf. Mon.*, chapter 1, section 2, question 4, and by Salmeron, chapter 6, paragraph 38, along with Cordes, Pellikan, and Suarez (and they also cite Layman, Vasquez, Azorín, and Sanchez, but not correctly; for Layman is in favor of the second opinion, as will be seen below, and he cites Vasquez, Azorín, and Sanchez in his own defense).

The reason for this first opinion is that those who profess a rule profess it as originally instituted; therefore, they ought at least to be prepared to observe it when it is a matter of restoring it. However, an exception is made if the religious, at the time of their profession, expressly intended not to obligate themselves any further than to that rule as so relaxed. Others, however, as Palotti states in *I.r.*, 16, title 4, question 4, paragraph 11...

[*Latin ed. p. 79*]

Laym. book 4, treatise 5, chapter 9, paragraph 13, together with others, as mentioned above, and Spor. volume 3, page 101, paragraph 161, state, and it is no less probable (as Tournhem says, volume 3, page 83, question 3), and perhaps even more probable, that religious are not bound to this, unless a reform appears to be a necessary means for the preservation of the order; that is, if very few strive to attain religious perfection with the present observance, or if they live scandalously in the eyes of the world, so that it would be better for the religious order to be dissolved than to continue in that manner. The reason is that those who make a profession are considered, according to the present state of the rule, to be professing according to the present state, rather than according to the original institution. Laym. in the aforementioned book and chapter, with Lessius and Sanchez, state that a superior can, for some public necessity, impose a certain austerity for a time, such as fasting, etc. Furthermore, Sanchez, Silva, Vega, Vasquez, and Salm, paragraph 82, add that superiors can enact new statutes, when they

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are necessary in order to preserve the essential vows and other statutes of the religious life.

45. "Although it is not customary, nor should superiors, under sin, command internal acts: it is nevertheless probable that it can happen, as Laym., Suarez, etc., teach. The reason is that it is likely that some religious intend to obligate themselves to this, when they offer themselves as a holocaust to God."

46. Question: How many sins are committed here?

[*Latin ed. p. 80*]

A religious person acts against the precept of obedience. Soto, Led., Laym., Tamb., etc., apud Salm., cap. 6, n. 100, say that one sin is committed against the vow of obedience, because they are only bound to obey by virtue of the vow. However, they are more likely to contradict Salm., n. 110, along with Suar., Pell., Pal., etc., who hold that two sins are committed: one against religion, by reason of the vow; the other against the virtue of obedience which the religious person owes to his superior, by reason of the promise and tradition made by himself in his profession, by which he is, by himself, even without a vow, bound to obey a legitimate superior.

47. "You ask whether a subject is bound to obey if he doubts whether the thing commanded by the superior is lawful or whether there is a just cause for commanding.

"Answer: 1st. Generally, he is bound, because then the condition of the superior is better, who is in possession of the power to command; but in doubt, no one should be deprived of a right he possesses. Do not say that the subject is also in possession of liberty, even though he has a duty to obey.

"Answer: 2nd. He is not bound if he fears a grave damage by obeying. The reason is that in doubt, the accused should be favored, and he from whose damage is being spoken. Although the subject is not in possession of liberty, he is nevertheless in possession of a right, by which he can preserve himself from dangerous things. Less., Sanch., 6 de mor., cap. 4, and others."

"Question: 1st, whether a subject who doubts whether the thing...

[*Latin ed. p. 81*]

Whether the command is licit or not, one can and must obey. It appears that Adrian [de] Lessius denies this in *Lecturae* 2, chapter 41, number 76, saying: "No one who doubts whether an action is mortal or not can licitly obey, precisely because he is doubting." Vasquez and Rodriguez report the same opinion, as cited by Palearius. However, the common and certain opinion is to the contrary, that even if doubt persists, one cannot obey; for it is altogether illicit to act with practical doubt (which, as Lessius himself understands, and which Vasquez and Rodriguez also easily understand). Nevertheless, in that case, one is bound to set aside the doubt,

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and thus can and must obey. The *Glossa* in chapter 6 of the book *Ad aures*, concerning the observance of orders, says: "If there is doubt about a command, for the sake of obedience, the one subject to the command is excused from sin, even though in truth it is evil." Azorín, volume 1, book 2, chapter 19, question 9, states that this opinion is received by common consent. Cajetan, 2-2, question 169, article 2, ad 4, doubt 2; Lessius, book 2, chapter 41, number 73; Silvestro, question 19, article 5; Cabassola, volume 3, book 1, chapter 21, number 17; Contraro, volume 4, page 89, question 5, response 2; Anacleto, *de consc.*, page 27, number 34; Palearius, page 1, division 3, point 15, number 3; Sporer, volume 3, *de statu religiosorum*, page 101, number 161; Holzmüller, *de præceptis part.*, volume 1, page 479, number 590; Elburgius, volume 2, page 620, number 612; Salmeron, *Tractatus* 15, chapter 6, number 68; Sanchez, *Decreta*, book 6, chapter 3, from number 3, with St. Bonaventure, St. Antoninus, Innocent V, Osiander, Abel, and others.

[*Latin ed. p. 82*]

Palud., Soto, Nav., Tol., Mol., Valent., Sa., Silvest., Ang., Arm. and countless others. This is proven: 1. from Deuteronomy, chapter 17, where it is written: "If a difficult and ambiguous judgment arises before you..., you shall do whatever those who preside over the place chosen by the Lord say." Also, from Dist. 23, q. 1., where it is said that a subject can obey, if what is commanded to him is either not contrary to a certain precept of God, or if whether it is so is not certain. However, the ability to obey does not denote liberty, but rather the honesty of acting, namely, not to violate the precept concerning whose transgression the subject doubts. St. Bernard confirms this in *De Praeceptis et Disciplina*, chapter 12, where he writes: "Whatever a man commands in God's stead, which is nevertheless not certainly displeasing to God, must be received in the same way as if God Himself were commanding it." Indeed, the Lord Christ Himself said: "He that heareth you, heareth me." Luke 10:16. And the Apostle in Hebrews 13:17: "Obey your leaders, and be subject to them." Furthermore, St. Ignatius prescribed in the Constitutions of the Society of Jesus: "Obedience is due in all things where no sin is perceived, that is (as he declares), in those in which there is no manifest sin." Similarly, it is stated in the Rule of the Brothers Minor, chapter 10, according to Elb.: "Obedience is due in all things which are not contrary to the soul and the rule." The same was taught by B. Ubertus in *Liber de Eruditione Religionis*, chapter 1.

[*Latin ed. p. 83*]

Where: Unless it is clearly evil that which is commanded, it must be accepted as if it were commanded by God. The same Saint Bernard of Cree wrote in the 2nd Dist., 39th Question, 3rd Article: "In cases of doubt as to whether something is contrary to the precept of God, one must adhere to

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the precept of the superior; for, even if it were contrary to God, nevertheless, because of the good of obedience, the one who obeys does not sin." And the same Saint Bonaventure taught previously in the *Speculum*, Book 1, Chapter 4. This is proven by a second reason, because the superior is in possession of the power to command; therefore, he should not be deprived of this power, unless it is established that the thing commanded is illicit. This is confirmed, because if those subject to authority could, in all cases of doubt concerning the goodness of an action commanded, exempt themselves from the yoke of obedience, then no community could be well governed or maintained. Hence, Saint Bernard (in his book *De Gratia et Arbitrio*) rightly rebukes religious who question the precepts of their superiors, saying: "It is the judgment of an imperfect heart and a weak will to adhere to individual things that are commanded and to demand a reason for everything; for it is certainly more fitting to be altogether nothing than to remain with our own." For those who will be their own masters, as if they were gods, knowing good and evil, become not only their own masters, but also demons. And here, the rule does not apply to the subject that in doubt, the condition of the superior is better; for, since he has already subjected himself to the authority of the superior, in cases of doubt, the possession of authority stands for the superior, who has the right to command.

[*Latin ed. p. 84*]

From this, it follows, namely, that if there are diverse, probable opinions concerning a matter commanded by a precept, whether it is licit or not, the subject is bound to obey, as commonly taught by Sanch. loc. cit. n. 6, and loc. i. c. 3, n. 6, Az. loc. cit., and Salm. d. c. 6, n. 67, along with Valent., Pelliz., Lez., Vill., Salas, Cord., and Prado (contrary to Less., Dian., Sanc., and Pal., who in tract. i. d. 2, p. 6, n. 5, call their opinion probable, but admit that it is contrary to the common opinion, and also say that it should always be consulted in practice).

It does not, however, obstruct to say that the superior does not have the right to command that which is illicit, and therefore, when he commands something that is probably illicit, he probably cannot command it; therefore, the subject is probably not bound to obey at that time. But this argument fails on two grounds: for the argument would hold if the prelate commanded that thing as probably illicit. But we say that in that case, he commands that thing, not as probably illicit, but as probably licit; and therefore, he commands licitly, and consequently, the subject is bound to obey.

Furthermore, although it may be probable that the prelate cannot command that thing, since it is probably illicit, it does not follow that it is probable that the subject is not bound to obey; for even if the superior does not have the right to command that which is certainly unjust, he nevertheless

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has the right to command that which is probably just.

[*Latin ed. p. 85*]

It is just either that which is certainly just, or that which is not certainly unjust; therefore, the subject is bound to obey his superior in all things which are either probably just, or which are not certainly unjust. Hence, it rightly follows that the subject is bound to obey the prelate, even if the matter commanded appears to him to be probably illicit (whatever they may say in Salm. n. 70, when they themselves, in n. 66, openly assert that the prelate has a right to command that which is either probably just, or that which is not certainly unjust). The reason is that the right of possession, which the superior has, prevails over any contrary opinion which lacks convincing reasons, establishing moral certainty, according to the teachings concerning conscience, as Lugo, Pal, Ronc., Spor. and others hold in the present case. Bus. lib. i. p. 6. v. 5. Superiori et Laym. l. i. tr. i. c. 5. §. 2. n. 11. with Vasq., Cord. and Mir.; and the same is taught by Sanch. l. 6. c. 3. n. 6. and l. i. c. 10. n. 9., where he does not hesitate to retract from a different opinion which he formerly held concerning marriage, l. 2. d. 41. n. 10. It is inferred that: 2. The subject, even if he has a single probable opinion that the commanded thing is illicit, and he sees no probability of its honesty, is nevertheless bound to obey, as Pal. l. c. punct. 13. n. 4. and Sanch. d. c. 3. n. 6. teach, with Suar., Silv., Ang., Valent., Tab., Sayr., Salas.

[*Latin ed. p. 86*]

Rosell and Cord.: The reason is this: since it is not certain that the action is wicked, the prelate has the right to command everything that seems permissible to him, even if it appears unlawful to the subordinate; for the prelate, as we have said, is not to be deprived of his right to command, unless it is certain that the thing commanded is unlawful. This is evident from the decree of the Holy Office, concerning the major excommunication, where it was decreed that a spouse who has only a probability, and not certainty, of the nullity of his marriage, is bound to fulfill his duty to the other, who still possesses the right to demand it. And what has been said about doubt concerning the honesty of the thing commanded, must also be said in the case of doubt whether the command exceeds the authority of the prelate, or whether it is contrary to the rule, as taught by Sanch. book 6, chapter 3, paragraph 3, and Salm. paragraph 6, with Az., Valent., Cord., Vill., Salas, etc. However, the Doctors commonly limit this statement, saying that the subordinate is not bound to obey if the thing is very difficult and burdensome; for then the difficulty of the action, together with a probable opinion that the thing commanded is unlawful, or that the command exceeds the authority of the superior, outweighs the obligation. Thus, Bus., as above, and Less. book 2, chapter 41, paragraph 73, Pal. book 3, point 14, paragraph 16, and Salm. paragraph 68, with Soto, Lop., Med., Hurt., Prad.,

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Pellizz., and the common opinion. Secondly, the subordinate is not bound to obey if, by obeying, he would expose himself or another to danger.

[*Latin ed. p. 87*]

The risk of incurring a grave detriment to life, reputation, honor, or property; thus, Less. n. 76, Sanch. n. 24, Pal. n. 16, Holzm. p. 479, n. 590, Tourn. vol. 1, p. 138, Elb. vol. 1, de consc. n. 60, and Salm. n. 69, with Soto, Bann, Hurt, Led, Prado, Rodr, and Pell. The reason is that the subordinate is not obligated to deprive himself of a certain right that he possesses concerning such important goods, so that the superior may be deprived of his own possession, which in that case is somewhat uncertain. However, it is doubted: 1. Whether the subordinate is obligated to obey when he reasonably believes that the command has not been imposed or has been abrogated. The answer is negative, as commonly taught by Sanch. dec. l. 6, c. 5, n. 7, and Salm. c. 6, n. 73, with Hurt, Prad, etc. Indeed, it should be said that in a doubt about the imposition of a command, there is no obligation to obey, unless it is certain that it has been imposed. It is doubted: 2. Whether the subordinate is obligated to obey if the doubt concerns whether the one commanding is a legitimate superior. Vasq, Salas, Dian, etc., deny this, according to Salm. tr. 15, c. 6, n. 64, because (as they say) in that case, the possession of the superior is also doubted. But it is truer to say, with Less. c. 41, n. 78, Cabass. l. 1, c. 21, n. 17, Tourn. vol. 3, p. 89, Sanch. l. 6, c. 3, n. 29, and Salm. n. 65, that the subordinate is obligated to obey in that case, if he is generally considered to be...

[*Latin ed. p. 88*]

Regarding the superior: because, on the one hand, there exists a common estimation that he is such, and on the other hand, there is a probability that he is indeed the legitimate superior, the Church fulfills its jurisdiction, according to the law of Barbarius, in the titles concerning the office of the prelate. Therefore, in that case, it will not only be probable, but certain, that he is the superior. Conversely, if he is not commonly regarded as such; because, as Cabassus says in the aforementioned work, then in such a case, the condition of the subject who possesses his own freedom is preferable, when there is doubt.

48. Question 2: Whether a religious person can validly make a vow without the permission of his superior. Paludanus, Vallensis, Anglerius, and Rosellus deny this, because the religious person, through the vow of obedience, has deprived himself of his own will. But Navarrus, Cajetan, and Soto, along with the writings of Alexander of Valencia, conference of monks, chapter 6, section 1, question 4, and others, rightly say that a religious person can validly make vows that do not contradict the rule or the precept of the prelate, nor the obedience due to him. Therefore, they can make personal vows, or vows concerning matters prescribed, and even those not

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prescribed by the rule, if they are not forbidden by the rule. However, the superior can prohibit his subjects from making vows, without consulting them, as Suarez and Bartoli state in the aforementioned work, following Saint Faustus. But it is also said that, in some cases, vows made are valid, even against such a prohibition, provided that the matter is pleasing to God, even if the manner is not pleasing to God.

49. Question 3: Whether a religious person is obligated to obey a prelate who commands him to reveal a secret.

[*Latin ed. p. 89*]

It is entrusted to him. He is obligated, if otherwise damage would occur to the monastery or to another third party, or even to the prelate himself; because then, even without a command, the obligation to manifest is clearly pressing, which is minimally hindered by the commission of a secret. Thus teach Saint Thomas [Summa Theologica] 2-2, question 70, article 1, second part, Saint Antoninus, Navarrus, Regius, etc. Otherwise, if the aforementioned damage is absent; because then the natural obligation of preserving fidelity is pressing, which cannot be removed by the prelate's command, as Saint Thomas teaches there. And the words of the Doctor are: "Sometimes there are things that a person is obligated to reveal, for example, if they pertain to the corruption of a multitude, either spiritual or corporal, or to a serious harm to someone. Which a person is obligated to reveal either by testifying or by denouncing... Sometimes, however, there are things that a person is not obligated to reveal; hence, he can be obligated by the fact that they are entrusted to him in secret; and then, in no way is he obligated to reveal them, even by the command of a superior. But whether a religious person can reveal a secret entrusted to him in order to avoid his own damage, is denied by Alex. [de Alexandro] in the conference of monks, page 124, question 9, with Scotus, Silv., etc. But it is more probably affirmed by Lessius, Layman, Lugo, Sporus; Roncaglia, and many others whom we have cited in book 3, number 971, see question 50. It is worthwhile to consider, concerning the obligation of all these vows, whether..."

[*Latin ed. p. 90*]

A religious man, should a notable and unforeseen circumstance arise, is bound to the vows made in his profession. Speaking of simple vows (in the treatise *De Voto*, book 3, chapter 226), we have stated that it is quite probable that there is no obligation to fulfill a vow if a notable circumstance arises that was foreseen, in which case the person would not have made the vow; except for the simple vow of chastity and religion. For, although Bonaventure, in *De Anima*, book 2, distinction 4, question 2, paragraph 1, number 26, and Led, Leander, and Quintanus, apud Salmeron, in the treatise *De Voto*, book 15, chapter 6, number 32, hold that one is not bound by the aforementioned vows if the one who made them is agitated by the

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impulses of the flesh, with a clear danger of incontinence, and with the experience of past failings, if afterwards the impulses and dangers persist; because, as they say, in such a case, such vows are not made for the better good; nevertheless, Sanchez, in *Decreta*, book 4, chapter 8, number 9, and in *De Matrimonio*, book 7, distinction 11, number 8, and Pontius, in *De Matrimonio*, book 6, chapter 12, number 2, and Salmeron, in the treatise *De Voto*, book 15, chapter 6, number 35, with Suarez, Laínez, Palotti, Moya, Díaz, etc., hold that this opinion is not practically probable; because otherwise, there would scarcely be any case in which the aforementioned vows would remain firm, since scarcely anyone would be found who, either because of their fiery constitution, their proven weakness, their wicked habit, or because of demonic suggestions, would not be agitated by the impulses of the flesh, and would easily persuade themselves that they are not bound by such vows.

[*Latin ed. p. 91*]

Speaking now of solemn vows made in religious profession or in the reception of the sacred orders, it must be entirely held, in common with the Doctors, that in no way can the aforementioned vows be annulled due to any notable circumstance arising, even if unforeseen, provided that the circumstance does not concern the essence of the vows. Thus, *Sp. de voto* c. 3, n. 6; *Ronc. vot.* c. 2, q. 3, r. 3; *Sanch. de matr.* l. 10, d. 9, n. 18; *Laim. lib. 4*, tr. 4, c. 7, n. 5; *Bon. q. 2*, p. 3, §. 2, n. 5; *Holzm. de voto* n. 411; *Pich. lib. 3*, dec. tit. 34, n. 5. And the same is said when speaking specifically of the solemn vow of chastity, *Sanch. dec. l. 4*, c. 8, n. 10, with *Val.* and *Salm. de voto* c. 1, n. 44. The reason is that the religious or priest, in such a case, is not considered as a particular person to whom it would be more fitting at that time not to be bound by the vow, but as a part and member of the community of the Church to whom it is incumbent to subordinate his private good to the common good; for otherwise, countless inconveniences, scandals, and disturbances would undoubtedly follow, to the great detriment of the Christian republic. And the same must be said, for the same reason of the common good, concerning the vows that are made by men or women in certain congregations; especially if a vow of perseverance is added, as is done.

[*Latin ed. p. 92*]

In the venerable congregation of the Fathers of the Mission of St. Vincent, founded by St. Vincent de Paul, and in our own small congregation of the Most Holy Redeemer: for here a burdensome and mutually binding contract intervenes. Indeed, no circumstance arising, even one unforeseen, can render burdensome contracts invalid: hence, just as the congregation cannot reject an offering due to a subsequent circumstance (except in cases of sin), so neither can the offering abandon the congregation.

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Question: Does a license granted by an inferior prelate hold validity if it has been denied by a superior?

Probably, Holzmüller affirms this in volume 1, page 474, number 610, and Croix in book 4, number 116, along with Pellizzari in his *Ratio*, because the superior, by denying the license, does not in the least invalidate the power of the inferior. However, I believe it should be said otherwise, if the superior prelate positively prohibits the subordinate from carrying out the requested matter; for then the inferior cannot dispense with the mandate of the superior.

What if the superior prelate forbids the inferior from granting a license for a certain matter? The aforementioned authors probably still say that if the inferior grants a license, he grants it validly (although illicitly); otherwise, if the superior had declared such a license invalid.

Furthermore, it should be noted that in the Council of Trent (session 21, on the rules, chapter 4) it is stated: "It is not permitted for religious to deviate from their rules, even under pretext."

[*Latin ed. p. 93*]

To approach their superiors, unless they have been sent or called by them. 51. Regarding the obedience of nuns, it must be noted that nuns, by reason of their vow, are bound to obey. 1st, the Supreme Pontiff; 2nd, the local bishop, unless they are exempt; but if they are exempt, the superior of the order, in the same way that the religious of that order obey him. Even those who are exempt are bound to obey the bishop in those matters in which he acts as a delegate of the Apostolic See, as in the observance of enclosure. 3rd, they are bound to obey the abbess in those matters that pertain to the rule. But it is necessary to note and discuss other things concerning this obedience that nuns owe to the bishop and the abbess. 52. Regarding the obedience due to the abbess, 1st, a great question arises here: can the abbess command the nuns in virtue of obedience, obliging them in conscience? The first opinion denies this, following Soto, Caramuel, etc.; because, as they say, the abbess is not capable of exercising spiritual jurisdiction, but she can only command those things that pertain to the economic administration of the monastery. However, the second opinion affirms this, which is held by Pasqualis in *Lauretana*, p. 1, n. 761, and eleven other authors cited by him, and to which de Alexandro, chapter 6, section 1, question 7, adheres. The reason is that, by the vow of obedience, the nuns are bound to obey all...

[*Latin ed. p. 94*]

to her legitimate superiors. A legitimate and true superior, however, is to be considered the abbess in her monastery; for when the pontiff approves a religious order, he likewise approves among the nuns the order of superiority and subjection: otherwise, how could the monastery and the observance

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of the rule be maintained? Therefore, although the abbess cannot exercise jurisdiction, as is certain and common; she can nevertheless, at least as a minister, demand obedience concerning matters which are prescribed by the rule, or which are suitable for the advancement of the nuns according to the rule. And the second opinion seems to me absolutely more probable, since such obedience appears to be absolutely necessary for maintaining the observance of the rule; for such is the universal practice in observant monasteries.

53. 2. The question arises whether the abbess can grant dispensations to her nuns concerning the rules or vows. It is certain that the abbess cannot, in an authoritative manner, grant dispensations concerning the observances of the religion, namely, concerning breaking fasts, eating meat, etc., contrary to the rule; but she can certainly grant dispensations by the commission of a prelate, as Lez., Tamb. with Alex. c. 11. §. 1. q. 4. note, or she can herself declare at times that a fast or other precept is not binding. Concerning the vows of the nuns, it is likewise certain...

[*Latin ed. p. 95*]

It is not possible for the abbess to dispose of or change these matters, as a bishop or regular prelate can do with them, if they are exempt; but the Doctors commonly agree that the abbess, by reason of the dominative power which she holds over her subjects by virtue of the vow of obedience, just as parents have power over their children, can annul their vows, whether concerning matters of supererogation, or concerning matters pertaining to the rules, as Navarez, Soto, Tamini, and Silvestri, with Alexander, teach in the cited passage, question 5. And this is so even if the vow is to pass to a stricter form of religion, as Pasqualis holds, and Alexander adheres to in the aforementioned passage, against Lessius, Pellican, etc., 54. However, it is doubted whether the abbess can annul a vow made by a nun with her consent. Richard denies this. But Silvestri and Armilla affirm it, to which I adhere, along with Tamini, Pasqualis, and Alexander, question 6, and Salmeron, provided that a just cause is present; otherwise, without a cause, she will sin, but probably no more than venially. See the statements on vows, number 23g; see Certain, 55. The abbess cannot annul the vows of novices, but only suspend the execution of them, if they are of service to the probation, as Lessius and Silvestri state. However, if the vows were made by a novice while she was still under the power of her parents, then Alexander, in the cited passage, states that the abbess can annul them, since she then succeeds to the same dominative power over the novice.

[*Latin ed. p. 96*]

56. Concerning, however, the obedience due from nuns to the bishop, several other points must be noted. It should be noted 1st that nuns are not bound to obey the bishop concerning the election of officials of the

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monastery, since this election pertains entirely to the nuns, according to the decree of the Holy See, cited by Paschasius in *Lauretana*, number 770. And the aforementioned officials can be removed by those who elected them, as decreed by the Council of Trent, Session 25, on the reform of religious orders, chapter 2. It should be noted 2nd that the bishop can suspend the abbess from office in the case that she does not inform the bishop about the profession to be made by a novice, according to the Council of Trent, Session 17. It should be noted 3rd that the bishop can determine the number of nuns, so that those admitted may be conveniently supported: and this also applies to exempt monasteries. However, prelates of the order must also intervene in these matters, as stated in Salmeron, *Tractatus*, 18, on private vows, chapter 3, number 14, citing the Council of Trent, Session 25, chapter 3, and the Constitution of St. Pius V, and other declarations of the Holy See. It should be noted 4th that the bishop is bound each year to visit the monasteries of nuns subject to him, either in person or through a vicar with a special mandate. Monasteries immediately subject to the Holy See are also to be visited by the bishop, but with the authority of the Apostolic See; exempt monasteries are visited by the prelate of the order. Thus, according to Clement, *Attendes*, on the status of monks. But concerning the observance of enclosure, even exempt monasteries must also be visited by the bishop.

[*Latin ed. p. 97*]

As a delegate of the Apostolic See, so that in no way may the bishop be hindered, according to the decree of the Holy See, cited by Barbarius, on the office of bishops, allegation 102, number 7. And those who presume to hinder [the visitation], after three warnings, incur excommunication by that very act, according to Clement, as mentioned above, Volume V, Alexander, chapter 6, section 4, question 3, 57. Note the 5th point: During the actual visitation, nuns, when questioned by the bishop or by the superior of the order, are obligated to reveal the truth concerning the observance of the rule, as in Alexander, Volume L, question 5, with Texeda, even if the transgressions are minor; because ordinarily, the relaxation of the entire rule begins with these [minor offenses]. However, Lez and Alexander, in the aforementioned place, excuse the nuns from revealing the truth: 1st, if the crime has been amended; from which they infer that one is not obligated to reveal another's crime committed many years ago (for example, three years, as Mascard believes), because it is already considered amended. And for the same reason, correction should ordinarily precede denunciation. But on this matter, see what will be said later in number 246. 2nd, the nuns are excused if the crime is hidden, and there has been no prior infamy or obvious indication. 3rd, if it is clear that the superior will apply no remedy, or if the nuns know that the crime has already been denounced by others, from whom they themselves heard about it; because no one is obligated to

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perform a useless task. 4th, if the revelation would lead to personal harm. 5th, if...

[*Latin ed. p. 98*]

The crime must be known under the natural law; however, this is excepted if the crime is the cause of a common harm. But this matter should be discussed more fully below, in paragraph 246.

58. Regarding confessors for nuns, who must be approved by the bishop; see *De Sacram. Poen.*, Book 7, paragraph 571. But here, it is fitting to note other useful points: 1st, regarding the election of the abbess; 2nd, regarding the privileges of nuns and religious.

I. Regarding the election of the abbess.

59. It should be noted 1st, that according to the 25th session of the Council of Trent, Canon 7, an abbess should not be elected who is under 40 years of age, and who has not lived commendably for 8 years after her profession; otherwise, the election is invalid, as stated in the declaration of the Holy See, in Alex., *Conf. Monu*, chapter 9, section 1, question 1. Indeed, some say that, in such a case, the nuns are deprived of the power to elect for that occasion; but it seems more probable that the opposite is true, as stated by Passer. However, if there is no one in the monastery who has such an age, according to the same Council of Trent, a nun who is 30 years old and has 5 years of profession, or another from another monastery of the same order, and even of a different order, may be elected; but this only with the consent of the Holy See, as noted by Pasq. in *Lauret*, paragraph 680. If, however, there is already in the monastery a nun who is 40 years old (unless she is truly unfit), another cannot be elected, even if she is more suitable, without a dispensation from the Holy See, as stated by Alex., *l.c.*, question 2, from the decree of the Holy See. And here it should be noted that...

[*Latin ed. p. 99*]

As the abbess, so too must the procurator of the monastery be changed every three years, according to another decree of the Holy See, in Alexander, chapter 6, paragraph 2, question 13, note 2. It is not permissible to elect as abbess those who are illegitimate, infamous, or corrupt, such as widows, unless the corruption is hidden, as declared by the Holy See. See Alexander, book 1, chapter 9, question 5, paragraph 1. Furthermore, neither the blind nor the deaf are to be elected, according to chapter Hino, paragraph "De caeco," district 49, and chapter "Constitutionem." The Doctors write, in Alexander, question 6, note 3, that those who have entered the monastery as novices are not admitted to the election of the abbess, but only those who have made solemn vows; Suarez, Lezincano, Tomasso, Alexander, chapter 9, paragraph 2, question 1, note 4. It is stated that if any nun is infirm in bed, her vote must also be received, either in writing and sealed, or by two nuns appointed by the president of the election. See Alexander, ibid., question 2,

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from the decree of the Holy See, note 5. If the election is not completed due to discord, the presiding prelate cannot give his vote, as declared in several decrees of the Holy See; but he can certainly set a time for the election, and if that time passes, he himself will appoint the abbess. This has been declared repeatedly by the Holy See, in Alexander, question 3, note 6. A nun who has already given her vote cannot revoke it, according to the common opinion of the Doctors. When the election is held by secret ballot, the Council of Trent decrees, in the aforementioned passage, that the votes must be given secretly.

[*Latin ed. p. 100*]

With a notary and 4 or 5 others assisting; otherwise, the election is null, as Garcia, Zerolo, Rotolo, and de Alex. q. 5, say. Even if it is done otherwise, this is due to ignorance, as Tamburrini and Richerius state from the decree of the Sacred Congregation. For an election, the majority of votes suffices, as Mirandus, Rodericus, etc., state in common with Alexander q. 6, against Tamburrini and others who require two-thirds. Note 7: It is the case that in the election of an abbess, as the Council of Trent prescribes in the same book, the prelates who preside must be outside the cloister. However, Pasqual, Mirandus, and de Alex. c. 9, § 2, q. 7, believe that, if there is a just reason (for example, if disturbances are feared, as Mirandus says in de monachis q. 2, a. 15), then the prelates may enter the cloister. Therefore, it must be noted that in monasteries that are not exempt, or are subject to the Apostolic See, a bishop presides; in exempt monasteries, a regular prelate presides together with the bishop, according to the constitution of Gregory XV. However, the bishop only assists, but does not take the votes; as Alexander states from the decree of the Sacred Congregation q. 8. After the election has been made, unless something else prevents it, the election must be confirmed in the same place by the presiding prelate, that is, by the bishop, or by the regular prelate in exempt monasteries, or by the Apostolic See if the monastery is immediately subject to it. See Alexander c. 9, § 4, q. 1. And this confirmation can be made even by a prelate who is absent and still living outside the diocese, as Pasqual holds.

[*Latin ed. p. 101*]

(contrary to Tamb.), unless opposition is present; in Alex., question 3. Furthermore, an abbess cannot exercise her office before confirmation. She herself must also be blessed in the exterior church by a bishop or a regular prelate within a year; otherwise, she is deprived of her office; but such a blessing can be conferred upon her by another, even a simple priest; Paschal and Alex., question 8. But in all these matters, as Tamb., Azor, etc., note with Alex., question 8, the custom of monasteries must be considered. Note 8: It is possible for abbesses to be elected for three years or for individual years, but not for longer than three years; otherwise, the election is invalid.

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Moreover, a triennial abbess must remain vacant for three years, according to the decree of Gregory XIII. See "Exposcit etc." Furthermore, she cannot be elected as a vicar, should the new abbess be lacking; because the pontiff commands that the previous abbess be entirely without authority for three years. See Alex., chapter 9, section 3, question 2. Alex., question 4, with Roderic, states that a perpetual superior can be elected in colleges of oblates, because the bulls speak only of professed nuns. It is fitting to add here, II, On the privileges of nuns and religious. 6: Here, it must be noted concerning the privileges of regular canons that all orders are regular, according to Ligurian Theology, Moral, Volume VII.

[*Latin ed. p. 102*]

Those who partake in the privileges of other orders, whether of mendicants or otherwise, as it is asserted to be the case from the privileges granted, according to Salm. tr. 18, de priv. c. i, n. 90, with Lez., Tamb., Mir., Pell., Rodr., and the common commentators. Hence, it should be noted that 1st, nuns enjoy the same privileges (of which they are capable) as the religious of the same order. Thus, according to Alex. conf. mon. c. 10, q. 1, with St. Anton., Pal., Rodr., Tamb., etc., against Sanch., Barb., and others. The reason is that, since they live under the same rule, they are part of the order, and therefore they deserve to enjoy the privileges of the order. And this even if the privilege expresses that the concession is made to men or males; and even if the nuns are subject to the bishop, as Salm. l. c. n. 92 states, with Suar., Pelliz., Pal., Bon., Bord., and Alex. c. 10, q. 2, who notes with others q. 3, that they also enjoy the privileges of other orders that have been granted to their own order. 61. From this, it is inferred that 1st, with Lez., Pasq., and Alex. q. 5, the abbess can dispense in fasts, in the office, etc., according to the privileges granted to her order by the prelates; because, although she herself cannot dispense by her own authority due to a lack of spiritual authority, she can nevertheless do so by the commission of the prelate, which is presumed to have been given to her immediately upon her election as abbess. It is inferred 2nd, that nuns who are subject to the bishop can properly make use of a privilege, for example, to receive absolution, etc.

[*Latin ed. p. 103*]

To his own bishop, when a privilege has been granted to any religious order; otherwise, if the power to absolve is not granted to the religious, but only to the prelate of that order; thus, Alexander III, in *Decreta*, cap. 10, question 4, conclusion 3, with Salmeron, *Tractatus de Censuris*, cap. 9, paragraph 65, and Viva, Roncaglia, Rodriguez, Alexander III, cap. 1, question 6 (whatever Navarret, Barbieri, etc., may say in Alexander III); all religious, of both sexes, during a general interdict, can perform divine services in their monasteries, such as reciting the offices, celebrating Mass,

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etc., but with a subdued voice, with the doors closed, without bells, and excluding those specifically interdicted, or those who caused the interdict, as was granted in chapter *Alma Mater*. Furthermore, they can receive the Eucharist and attend Mass, as stated by Salmeron, paragraph 48, with Palafox, Laym, Henry, Sayr. They can also receive Extreme Unction, as stated there by Salmeron, with Palafox, Avila, Henry, etc. And in addition, the religious, by virtue of their privilege, can admit all servants of the monastery, procurators, and workers, as granted by Alexander IV. And the same was granted by Eugene IV for the blessed and tertiaries: except, of course, for those specifically interdicted, etc., as mentioned above. Salmeron, paragraph 66, Alexander III, question 7, etc. And they can also publicly celebrate on certain feasts, such as Easter, Pentecost, the Nativity of the Lord, the Assumption of the Blessed Virgin Mary; also the feasts of the Most Holy Sacrament and their octaves.

[*Latin ed. p. 104*]

In the church of the ConcepciÃ³n, the Annunciation, and the Nativity of the Blessed Virgin, as well as in the churches dedicated to the saints and to the saints of their own order; also on the feasts of the Circumcision, the Epiphany, the Most Holy Trinity, the Apostles, St. John the Baptist, St. Lucy, St. Mark, All Saints, and All Souls. See Salm. nos. 61, 62, and 64. It does not impede to say that the Council of Trent, in session 25, chapter 12, concerning regulations, commanded that even the regular clergy observe the prohibitions within their churches; for it is probable that Alexander [de] Celles, in disputation 10, questions 8 and 10, following Peyr., Sorb., etc., understood the intention of the Council of Trent to be only to restrain certain brothers who claimed privileges and did not in any way observe the prohibitions issued by the ordinaries, and not to abolish the privilege granted to religious, even clerics, in the aforementioned "Alma Mater," for the common good, as mentioned above, during the time of the prohibition.

Secondly, it should be noted that in the churches of nuns, lay persons cannot be buried, unless they have the right of burial there, or unless permission is obtained from the Sacred Congregation, as is evident from several declarations of the Sacred Congregation cited by Alexander [de] Celles, disputation 10, question 10. And then the offices for the deceased must be performed either by the confessor of the nuns or by the regular clergy of the same order, if they are exempt, but not by the secular clergy, as stated by Barb., Lez., etc., with Alexander [de] Celles, disputation 11.

Thirdly, it should be noted that more privileges have been granted to the regular clergy concerning the Divine Office. Pope Clement VII granted to the nuns of the Order of the Poor Clares...

[*Latin ed. p. 105*]

A privilege, as Alexander states in chapter 10, question 13 (and as

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Salmeron, in *Tractatus de Privilegiis*, book 16, chapter 3, paragraphs 61 and 62, state that this privilege was granted to all nuns), which allows them to fulfill their obligations through the Office of the Laity, if, in the judgment of the prelate, confessor, or abbess, they are not sufficiently instructed to perform the Office of the choir. Clement also granted to all religious who are infirm, or who are attending to the infirm, the permission to fulfill their obligations by reciting Psalms 7 or 6, as assigned by their superior, along with seven Our Fathers and two Hail Marys. Furthermore, Innocent IV, through the bull *X*, granted to the nuns of Saint Clare, and subsequently to others through communication, the permission to fulfill their obligations with the Office of the Laity, if they are unable to recite the canonical hours for any reasonable cause, namely, if a nun is scrupulous, or if she is extraordinarily fatigued or occupied in useful ministries. Thus, Salmeron, in the aforementioned passage, and Alexander, in question 13. And it is noted 1. by Salmeron, in the same place, that this privilege can be used by themselves, without the permission of their superiors. It is noted 2. by Salmeron, in the same place, with Pellizon, that if nuns, through fault, should omit reciting the Office of the Laity, they do not sin grievously; because in such a case, they are considered as laity, who are not bound by mortal sin to perform such recitation. It is noted 3. that all religious who have a communication of privileges can also use this privilege, because, according to common opinion, just as nuns can use the privileges of religious, so conversely. And for this reason...

[*Latin ed. p. 106*]

It will suffice if they preach during Lent (although not every day) with great effort; if the multitude of penitents become accustomed to it; if they are released from their journey or preaching; also, if they are readers or students who are free for the greater part of the day for the study of Holy Scripture, or of the sacred canons, or of scholastic theology or moral theology. Thus, Salm. ibid. nos. 56, 57, and 63, with Pasq. etc. 64. Also, St. Martin V. granted to the monks of St. Jerome that those who, through infirmity, are unable to recite the office without weariness, even after they have recovered, may fulfill their duty by reciting what their confessors shall deem fitting. Also, Leo X. granted to the brothers of the Order the privilege of anticipating longer offices and shortening shorter ones for days in which they are less occupied with preaching and confessions or study, as Salm. no. 59 states, with Rodr., Tamb., Pelliz. etc., against Lez. Also, Leo X. granted to the regular clergy the privilege of reciting the office privately, mentally. And although Alexander c. 10, q. 16, with Pelliz., Lez., Tamb., Lugo etc., apud Salm., maintain that this privilege was revoked by Gregory XV and Urban VIII, who revoked all privileges of vocal prayer granted, as this privilege was such, as the Doctors commonly assert; nevertheless, it is more probable that Salm. tr. 16, cap. 3, no. 53, with Nav., Hurt., Henr.,

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Villal., Tamb. de sacr. miss., Rodr., Leand., contradicts this.

[*Latin ed. p. 107*]

Because, as they say, the aforementioned revocation concerned only those privileges granted verbally before Saint Pius V; and not that which was confirmed by Saint Pius through a bull, as Pell and Peyr report. They add that the privilege of L'ton was a declaration of a common right in the *Collectio Dolentes*, concerning the celebration of Mass, as the same Lez concedes. But the pronouncements of the living voice, which are declarations of common law or bulls, were, as almost all say, by no means revoked, as testified by Salm, *de nuptiis*, n. 53. But what Peyr objects to, namely, that said privilege was granted to the highest degree for that part which is said secretly in the public office or in the Mass, as expressed by the words of the privilege cited by Salm, *loco citato*, n. 51, does not at all impede; for there, at the end, it is added thus: "And that it may also be done in the same way by one who says the office by himself: since the verbal recitation is especially so that it may be understood by others." Therefore (as Salm rightly argues, n. 54), a private recitation, where nothing is said so that it may be understood by others, can be done entirely mentally by virtue of this privilege. It must be carefully noted concerning all privileges of religious, that the superior can, for a just cause, sometimes limit the privileges of his subordinates; because these are always understood to be granted in such a way that they do not prejudice the power of dominion which the superior has by reason of the vow of obedience.

[*Latin ed. p. 108*]

She has authority over her subjects. Furthermore, the abbess may also regulate the penance imposed by the monastic superior, if there is a just cause and access to a higher authority is not available. Thus, Alexander, chapter 11, section 1, question 28. Finally, it should be noted that, according to the bull of Paul V, section 8, all those who have professed their vows (as well as the ordinary members of the places) enjoy the indulgences granted to any religious order, as Alexander notes, chapter 10, question 18.

FIFTH DOUBT. WHO MAY ENTER RELIGION, AND WHO ARE FORBIDDEN TO DO SO.

65. Those to whom it is not permitted to enter religion.

66. In what necessity are parents prohibited from allowing their children to become religious?

67. When are children already professed obligated to leave religion in order to assist their parents?

68. Do children sin if they enter religion against or without the knowledge of their parents?

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69. When are parents prohibited from entering religion due to the necessity of their children?

70. Is it permissible to abandon brothers or sisters in need?

71. May those burdened with debts enter religion? What if they have already professed?

72. Those who vow to enter religion, when are they obligated, and when are they excused, to do so?

73. When is it permissible to transfer to a different, more lenient or stricter, religious order?

74. May parish priests enter religion, even if the bishop objects?

[*Latin ed. p. 109*]

75. Whether a bishop can prevent clerics from entering religion.

76. Whether and when bishops may abandon their churches or change them.

77. Whether parents sin grievously by dissuading their sons from entering religion.

78. Whether and how someone called to religion sins if he neglects to fulfill his vocation.

65. *Response:* 1.° Only those who are of their own free will and not bound to others can enter religion; those who are bound to others cannot do so without their consent. *Less. l. 2. c. 41. d. 3.*

Therefore: 1.° Minors cannot enter religion, because they are subject to their parents or guardians regarding the disposition of their lives.

2.° Nor can sons, if their parents cannot support them without them. *Laym. l. 4. t. 5. c. 4. n. 1. et supra l. 3. t. 3. c. 2. d. 1.*

3.° Nor can slaves without the consent of their masters.

4.° Nor can he who deceives a virgin under the promise of marriage.

5.° Nor can he who is indebted to creditors, if he can pay within a few years while remaining in the world. However, *S. Th.*, *Silv.*, *Fumus*, and others believe that he can cede his present goods to creditors; because the person of a free man is not bound for money.

6.° Nor can a bishop, without the consent of the Pope, to whom he has sworn an oath; besides which, he is bound to his church, just as a husband is bound to his wife.

[*Latin ed. p. 110*]

7.º Neither shall spouses, after marriage has been consummated, unless the husband has consummated it by force before the two months are completed, which are granted to them by law, nor unless one of the spouses has committed adultery: for then the innocent one may enter.

66. It should be noted here: 1.º that if a son professes religion, abandoning

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his parents in need, the profession, notwithstanding, is nevertheless valid. 2.º that if a son, remaining in the world, is in no way able to provide for the needs of his parents, he may lawfully enter religion. 3.º that if a son cannot remain in the world without a grave danger of falling into some grave sin, he may also lawfully enter religion, whatever the needs of his parents may be; for the spiritual salvation of the son should be preferred to the temporal life of his parents. Thus, St. Thomas, *Summa Theologica*, Quaestio 10, Article 9, where he says: "But he who has the intention of entering religion, and sees that he cannot live in the world without mortal sin, or not easily: if he fears the danger of mortal sin, he is more bound to provide for the salvation of his soul than for the corporal necessity of his parents, and is not bound to remain in the world." St. Thomas is followed by Sanch. *Decretum*, lib. 4, cap. 20, n. 11, Pal. *Tractatus*, 16, d. 1, p. 7, § 5, n. 7, and Salm. *Tractatus*, 15, *De statu religionis*, cap. 3, n. 50, with Lez., Garc., Peyr., etc. Understand, however...

[*Latin ed. p. 111*]

(as the Salmanticenses rightly observe, in the passage cited). If the danger is imminent and of such a nature that it cannot be morally avoided by the son, by remaining in the world. But now, the question is asked: what necessity of the parents prevents the sons from entering religion, and conversely, what necessity of the sons prevents the parents from becoming religious? Thus, St. Thomas answers and teaches in 2-2, quaestio 187, article 6, speaking of the sons: "If the parents are in a present necessity, to which it cannot conveniently be provided for, it is not lawful for the sons to enter religion." However, he says otherwise, if the parents do not greatly need the obedience of the sons. Hence, Sanchez, in his Decreta, book 4, chapter 20; Lessius, book 2, chapter 41, number 34; Salmanticensis, in *De Statu Religionis*, chapter 3, number 53, along with Suarez, Peyra, Palotti, and the common opinion, state that a son cannot enter religion, leaving his parents in a necessity, whether extreme or grave (but not a common one), even if the son has emitted a vow of religion. However, if the necessity is common, or if they suffer only a slight diminution of their status, as it seems to be taught by St. Thomas in the aforementioned place, quaestio 10, article 9, where he says: "If the parents cannot live at all without his obedience, he is bound to serve them and to omit other works of perfection. But if, without his obedience, they can be sustained in some way, not honorably, he is not therefore bound to abandon the works of perfection."

[*Latin ed. p. 112*]

67. This must be said concerning the sons who have not yet made their profession in religion. But a great question arises: whether, when parents are burdened by poverty, a son already professed is obligated to go forth to assist them. In extreme necessity, it is certainly held to be so. However,

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Salm. in IV. praec. c. unic. n. 11 states that this does not apply if the son can assist the parents without going forth, nor if the father's necessity is not evident, and if the superior denies permission, judging that the necessity is not of such a nature; for in doubt, one must abide by the judgment of the superior. But a greater doubt arises if the necessity of the parents is evident, but only grave. There is a threefold opinion on this matter. The first opinion holds that the son is obligated to go forth; because the natural obligation of the son towards his parents is not extinguished by the vow. Thus, Henr. de Pandao, Cord. etc., apud Salm. loc. cit. n. 12. The second opinion distinguishes and states that if the necessity of the parents precedes the profession, the son is obligated to go forth; because the obligation already contracted is not extinguished by the profession. Conversely, if the profession follows. Thus, very probably, Elb. in IV. praec. n. 552, with Less. etc., Tolet. summ. l. 5. c. 1. n. 9, and Nav., Suar., Silvest. etc., apud Salm. n. 13. The third opinion, which is more probable, teaches that in such a case, the son is neither obligated nor able to go forth without permission, whether the necessity of the parents precedes the profession or not. And this is proven from D. Th. 2.-2.

[*Latin ed. p. 113*]

Q. 101. Art. 4. Ad 4., where it is said: "He who has already professed in religion is considered as already dead to the world; therefore, he ought not to leave the cloister for the sake of supporting his parents." However, subject to the obedience of his superior and the regulations of his religious order, he is bound to use means to assist his parents, insofar as it is possible. This is proven by reason, because just as a married son is not bound to abandon his wife and go to his parents to support them, whether necessity precedes the marriage or not; because he has already entered into a state in which he is more bound to adhere to his wife than to his parents: so neither is a religious bound to leave the cloister to support his parents. See Bus. de IV. præc. V. l. 3. n. 335. in fin. n. 5., S. Th. l. c. and quodl. 3. art. 16. and quodl. 10. art. 9., Sanch. dec. l. 4. c. 20. n. 17. with Caj., S. Anton., Arm., Tab. etc., Bon. de IV. præc. p. 5. n. 7., Salm. n. 14. with Fag., Bord., Rodr. etc. Note here, by the way, the decree of the Most Holy Fathers, Pope Benedict XIV, beginning with "Pontificia," issued on May 28, 1745, which is to be noted in its bull, volume 2, page 53, where it is prescribed that religious living outside the cloister (as well as in civil life) are subject to the ordinary, who must also correct them. 68. The question arises: Do those who enter religion sin, against the will or without the knowledge of their parents?

[*Latin ed. p. 114*]

Luther, as Bellarmine recounts in *Controversias de Monachis*, book 1, chapter 36, paragraph 1, stated that it is sinful for children to enter religion without the consent of their parents, since they are bound to obey them

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in all things. However, this was refuted by the Council of Toledo, X, chapter last, where it was entirely conceded that children may enter religion without the permission of their parents, provided they have completed the years of puberty. The Council states: "Parents may give permission for their children to be given to religion no later than the fourteenth year of their age. Afterwards, whether with the will of the parents, or as a solitary vow of their own devotion, it will be permissible for the children to embrace the religious life." This was also confirmed by the Council of Tivoli, canon 24. The same was taught by St. Ambrose, St. Jerome, St. Augustine, St. Bernard, St. Thomas, and others, including St. John Chrysostom, who, speaking generally, wrote: "Those parents who hinder [their children's] spiritual [salvation] are not even to be known." Hence, Doctors commonly teach that children are not to be compelled to omit religion, in order to avoid scandalizing their parents. Thus, St. Thomas, 4th part, 38th question, 2nd article, 4th question, 2nd article, response 2; Palearius, *De Caritate*, book 6, page 16, paragraph 6, with Suarez, Vasquez, etc.; Spotorius, *De Scandalis*, chapter 1, paragraph 31, with Valois, Salmeron, translation 21, chapter 8, paragraph 87, with Cano, Ledo, Hurtado, etc. However, the aforementioned authors point out that in such a case, the child ought to wait somewhat, until the parents...

[*Latin ed. p. 115*]

Let them be reminded of their obligation; indeed, if he can easily and safely obtain their consent, it is fitting that he not depart without the parents' blessing. However, this must be understood, as we shall soon see, unless there is a probable danger that the parents unjustly prevent him from fulfilling his vocation. Therefore, in practice, sons are excused if they leave home without the knowledge of their parents. It is certain that concerning the choice of state in life, we are not bound to obey our parents, as the common opinion of Doctors teaches, with St. Thomas (2-2, q. 104, art. 5), who says: "Neither servants are bound to obey their lords, nor sons their parents, concerning contracting marriage, or concerning preserving virginity, or anything of this kind." Therefore, it is doubtful whether a son is bound to consult his parents, so that he may receive the right counsel from them. Regarding the marital state, Sanchez, in *De Matrimonio*, book 4, chapter 23, number 10, along with others, holds that a son is bound to consult his parents; because in such a matter, they have greater experience than young people. But still, concerning marriages, Castres, Henry, and Salm, along with others, adhering to the authority of St. Thomas (V. de Matrim. l. 6, n. 849, see Third Opinion), excuse a son from grave fault if he contracts marriage without the knowledge of his parents. However, whatever may be the case regarding this, Father Pinamontius rightly says

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(in his golden booklet entitled *Vocaz. vittoriosa*).

[*Latin ed. p. 116*]

(chap. 3.) that neither are those bound, nor is it advantageous, to seek the counsel of their parents concerning the choice of the religious state; because in this matter, they have no experience whatsoever, and also because parents, for their their own advantage, are changed into enemies, as St. Thomas says (2-2, q. 189, art. 10), speaking of religious vocation: "Often, carnal friends are turned away from spiritual progress." Indeed, more often, parents prefer their children to perish with them than to be saved without them, as St. Bernard says (ep. 111): "O hard father! O cruel mother! O cruel and impious parents! Not parents, but executioners; whose grief is the salvation of their child, whose consolation is the death of their son." Ibid. Hence, Porrecta, apud St. Thomas, in the same place, observes: "If God wishes to call a soul to Himself, and to make it forget its father and its father's house, He certainly suggests this, so that the one called by Him to religion should not interpose the counsel of his relatives in the execution of his vocation." And St. Cyril, apud the same St. Thomas, in the same place, explaining those words: "Jesus said to him: No man putting his hand to the plough and looking back is fit for the kingdom of God." (Luke 9:62), says: "He looks back who seeks delay in conferring with his relatives." Therefore, St. Thomas, in his work (Opusc. 17, cap. 10), absolutely advises those who are clearly called to diligently avoid taking counsel from their parents concerning their vocation: "From this counsel, first of all..."

[*Latin ed. p. 117*]

Those who are closely related by blood must be removed. For it is said: "Treat with your friend the cause that is yours." For those related by blood are not friends in this matter, but enemies, according to the Lord's words: "The enemies of a man are those of his household." From all of this, it is concluded that not only do the sons who embrace religion not sin by doing so without consulting their parents; but, speaking generally, they are greatly mistaken if they make their parents participants in their vocation, because of the danger to which they expose themselves, and by which they may be turned away from that vocation; and this is certainly confirmed by the example of so many saints, whose departure, unknown to or against the will of their parents, God approved and blessed even with miracles. The learned Elb. also states in de IV. præc. n. 538: "If a son feels himself called by God to the religious state, and foresees that his parents will be unwilling to accept this, and that they will oppose him out of carnal affection and frivolous reasons, he is not bound to consult them; for he will act more prudently by concealing it from them, according to that passage in Matthew 8, where the Lord rebukes the disciple who was unwilling to follow Him immediately because he had to bury his father

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first." However, whether parents sin gravely by deterring their sons from religion, see below, n. 77. 69. Conversely, St. Thomas teaches in the same place that it is not permissible for parents to enter religion, not only when they should be leaving their children in grave necessity, but even if they should entirely neglect the care of their children, that is,

[*Latin ed. p. 118*]

"Without having foreseen" (these are the words of the Doctor), how they might be educated. However, it is understood, as they say in Salm. d. cap. 3, n. 52, with Suarez, Palotti, Pellizzari, concerning those children who are not emancipated, whom parents cannot abandon in this life, but must provide for their necessities, both for sustenance and for moral instruction. Otherwise, it is different with emancipated children, whom parents, ordinarily speaking, are not further obligated to support or instruct, unless the children are burdened by a grave necessity.

70. However, brothers and sisters may not be abandoned in extreme necessity, but it is permissible in a grave one; although, for the sake of charity, one might postpone or even omit entering the religious state in order to assist brothers and sisters who are seriously in need. If, however, one has a religious vow, in such a case one might not postpone for a long time, without a dispensation. Thus, Salm. ibid. n. 54, with Sanchez, Suarez, Palotti, Azor, Pellizzari, Bona.

71. The question arises: whether a debtor burdened with another's money may enter religion. There are three opinions. The first opinion, with Gers., Palotti, Valois, Suarez, Regius, Moller, Bona, etc., apud Salm. de rest. c. i. n. 28g, and Holzmüller de rest. n. 518, absolutely denies it; because this would be contrary to the natural precept of justice, to seek spiritual gain while causing harm to the creditor, to whom the debtor is obligated to pay back by justice.

[*Latin ed. p. 119*]

The second opinion, which is held by Sanchez, Decreta, Lib. 4, cap. 19, n. 8, along with Major, Navar, Azor, and Salm, in the aforementioned location, n. 290, distinguishes and states that, if the debtor, while still living in this world, can probably and without great difficulty acquire, within a short time, what he owes, or a notable portion of the debt, in order to pay it, then he is obligated to wait. Otherwise, if he were to wait for a long time, or if he could not satisfy the debt without notable difficulty. As for what time should be considered short, Major believes it to be three years; Sanchez, along with Navar, believes it to be two years. The third opinion absolutely teaches that the debtor can immediately enter religion, surrendering his goods to his creditor. This is held by St. Thomas, 2-2, q. 189, a. 6, ad 3, and those who follow him, such as St. Antoninus, Silvestri, Caietan, Paludanus, Tabernarius, Anglerius, Armillarius, Aragonese, etc., as cited by Sanchez,

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in the aforementioned location, n. 7, and is considered probable by St. Antoninus. This holds true even if the payment was promised under oath, as noted by St. Antoninus, Silvestri, Tabernarius, and St. Antoninus. The reasoning of St. Thomas is as follows: According to civil laws, a free person is not obligated by money, but only the thing itself; because a free person is of greater value than any sum of money. Therefore, he can licitly enter religion, presenting his goods, and he is not obligated to remain in this world in order to seek a means to pay off the debt. Sanchez, along with Medinaceli, rejects this reasoning in n. 7, stating that it is not true that a person...

[*Latin ed. p. 120*]

The debtor is not bound to his creditors; otherwise, it would be unjust for a debtor, lacking goods, to be thrown into prison by the judge. But it is answered that the personal obligation which is inherent in the debtor is not already by reason of the person, but by reason of the goods, as St. Thomas teaches in the aforementioned place, and as Salm clearly asserts in book 1, chapter 224, number 224. Therefore, supposing that the debtor remains in this world and is free and able to acquire goods, it is fitting that his person remains bound to acquire those goods, since he can do so without great detriment to himself; and then the person of the debtor remains obligated, not directly by reason of himself, but indirectly by reason of the goods which he is able to acquire, since he is then bound not only to give what he has, but also to procure the possibility of paying, as long as he can acquire [goods] without great damage to his liberty. However, it must be said differently, supposing that he intends to leave this world and dedicate himself entirely to God in religion, where he becomes unable to pay: then he has a free person, so that he may dispose of it for the sake of God, and, with regard to paying the debt, it is sufficient if he cedes all his goods to his creditors. Otherwise, if he were to remain in this world, the person of the debtor would be directly and intrinsically obligated for the money owed; which is absolutely denied, because the liberty of man surpasses all estimation of money, as St. Thomas says above. Add (and thus it is answered).

[*Latin ed. p. 121*]

(regarding the first opinion) that natural law does not obligate when the debtor cannot satisfy the obligation except with such a detriment to his liberty and with the burden of incurring, while remaining in the world, the danger of eternal salvation. For no one is presumed to wish to obligate himself in a contract with such a burden. And just as one is not bound to remain in the world to fulfill the promise of marriage (unless he has extorted that union); so neither is one bound to remain to satisfy a debt. And this, even if the debt arises from a fault, as Salm. and others hold, *de

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jure*, number 290. Because the debtor is not bound with such a burden as to be obliged to deprive himself of a better state of life, namely, religion. These three opinions are all probable, but the second seems more probable to me; provided that there is no probable danger of falling into sin or losing the vocation to religion from this brief sojourn in the world. The Doctors agree that the aforementioned question arises only when the debts are certain. But, if they are uncertain, undoubtedly the debtor can immediately enter religion; because, since the obligation to repay uncertain debts to the poor is not from justice and natural law, but from piety and ecclesiastical law, as Salm. proves, *de rest.*, chapter 1, number 211, with Lessius, Vasquez, Bannitus, Villalobos, Leander, etc., against others, therefore, such a debtor can, without restitution, enter religion, since nothing...

[*Latin ed. p. 122*]

It is fitting to dedicate oneself, along with all one's possessions, to God in religion. Thus, Sanch., loc. cit., n. 4; Lugo; Suar.; Pal.; etc., with Psalm 16, n. 287. However, it must be noted that these passages pertain to natural law. But Sixtus V, by a bull issued in the year 1587, renders those who have squandered their goods, or who must render accounts before having paid their debts, or who have not rendered their accounts, incapable of entering religion. And although Clement removed this incapacity, he nevertheless left the prohibition in place. This, however, must be understood, says Croix, loc. 3, p. 2, n. 444, with Sanch. and Ills., concerning those who cannot otherwise satisfy their obligations except by remaining in the world, and from whom a solution can be hoped for; also, if the debts are large, exceeding one's own resources, as is stated in the bull: "burdened with a great amount of foreign money." Furthermore, Croix says, with Sanch. and Dic., that this does not apply to nuns; nor to knights of military orders, because these are not included among the religious in the sense of "odiosi"; moreover, it does not apply to those who are burdened only by uncertain debts; nor to those who have fallen into impotence without grave fault; for the bull is only for spendthrifts, as Croix notes, ibid., with Dic.; nor to debtors by reason of a donation; Croix, with Sanch. The precept concerning rendering accounts refers to accounts.

[*Latin ed. p. 123*]

These matters are very contentious, intricate, and deceitful, and are likely to give rise to lawsuits. *Croix* with *Dict. et Ills.* If someone, already burdened with debts, has professed religion, the profession is valid, as *Croix* states, number 444. Nor is the prelate then obligated to grant him permission, for the sake of justice, to labor in order to satisfy his debts, as *Croix* states, number 450, with *Lug.* and *Nav.* However, he is bound by charity, if no impediment arises. 72. "Response 2nd: He who has vowed religion is bound to enter according to the following rules."

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3rd: He is not, and indeed cannot lawfully, enter an order in which the regular discipline has collapsed (understand this in regard to the principal observances, as *Salm. de stat. rel.*, chapter 2, number 3): and this is due to the danger of perversion. *Laym.*, book 4, title 5, chapter 6, number 5. 4th: He who has vowed a less strict form of religion may lawfully enter a stricter one; but not the reverse: because he would be failing to fulfill what he promised. However, if he professes in the less strict form, the profession is valid, and he is released from the vow to enter the stricter one. The reason is that the solemn vow, by which a person is given over to religion and religion acquires a right over the person, supersedes the prior simple vow, by which no such right had been acquired by the stricter religion. *Laym.*, book, chapter, from *S. Th.*, etc. 5th: He who has vowed to try a stricter form of religion may change this into a vow.

[*Latin ed. p. 124*]

Concerning profiting and persevering in a religious life, the reason is because this is better. Laym. in loc., citing Sanch. and others. "Generally, Doctors of the Church say that if someone vows to enter a religious order, they are not obligated to seek it outside of their own nation or province; see Sal. tr. 15, ch. 2, n. 8. Furthermore, a woman who has vowed to enter a religious order is not obligated to seek a monastery outside of her homeland, far from her family, as Pal. d. 1, tr. 16, p. 3, n. 6, Sanch. d. 1, 4, ch. 16, n. 46, Tolet. 1, 4, ch. 17, n. 12, and Salm. 1, ch., with Garc., and others, state. The reason is that, generally, women who vow to enter a religious order are not considered to be obligated to do so, because this involves a grave and new difficulty; therefore, Tolet. and Garc. there excuse even men who have taken a vow of religious life. Question 1: Whether someone who has vowed to enter a religious order, and is once legitimately rejected from it, is obligated to enter again, if the monastery later wishes to admit him. The first opinion affirms this, and it is held by Laym. 1, 2, tr. 5, ch. 6, n. 4, Bon. t. 2, d. 4, q. 2, p. 5, §. 6, n. 11, and Sanch. dec. lib. 4, ch. 16, n. 71, with Abul. The reason is that the vow is not an act done for the benefit of the religious order, but for obedience to God; therefore, even if the order yields its right, by refusing to admit him, the one who made the vow is not thereby freed from his obligation. The second opinion denies this, and it is held by Pal. d. 1, p. 3.

[*Latin ed. p. 125*]

n. 10., Less. l. 2. c. 41. n. 44., Suar. c. 2. n. 7. et 10. et Salm. tr. 15. c. 2. n. 11. cum Arag., Pell., Garc., Dian. et a S. Fausto. The reason is that such a vow, although made in honor of God, is nevertheless considered to be made under a condition: if one is not rejected [by God]. Therefore, if the condition is not fulfilled, the obligation is extinguished. Bonaventure objects that a conditional vow does not contain any condition unless it is explicitly

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stated. But this objection does not seem to hold; for it often happens that a condition implicitly stated in a promise releases the promisor, as stated in l. 3. n. 720. Note. Furthermore, in this matter, it seems to me more probable to say that if one who makes such a vow has a reasonable hope of being accepted later, he is not released from the vow; otherwise, if no reasonable hope appears.

Question 2: Whether one who simply vows religious life sins mortally if, after entering, he leaves it without cause. The first opinion denies this, and this is held by Bonaventure in *de voto* d. 4. q. 2. p. 5. §. 6. n. 22, and by Soto, Cajetan, Aragona, etc., as cited by Sanchez in l. 4. c. 16. n. 90, and they call it probable in Salm. cap. 2. n. 23. The reason is that one who vows religious life is considered to vow it under the condition of a probation legally granted; but the law universally grants to those who enter the ability to leave the religious life without any cause, as is evident from c. 1. Lic. Theol. Mor. T. VII.

[*Latin ed. p. 126*]

From the Rule, book 6. The second opinion, which is more probable, and which is held by Sanch., in the aforementioned work; Pal., *Tractatus*, book 1, chapter 16, paragraph 4, number 2; Suar., book 4, chapter 3, paragraph 2; and Salm., chapter 2, paragraph 24, along with Pell., Garc., Mir., and others, teaches that one is not excused from this obligation by a mortal sin. The reason is that the vow of religious life obligates not only to receive the religious habit, but also to serve God for the entire duration of one's life; therefore, it also obligates to remain, unless there is a just cause for leaving, such as if one finds the religious order unsuitable for him, as Sanch. states. To the objection that the text speaks of those who enter a religious order only to experience it, without having made any vow, it must be replied that this is not the case. Rather, as Az., in book 11, chapter 12, and others cited by Sanch., as mentioned above, state, if the one making the vow does not intend to obligate himself to remain, but only to experience [religious life], then he is not obligated to remain. And this is expressly stated in *Decretum Thomae*, part 2, book 2, question 185, article 4, where it is taught as follows: "Therefore, if the one making the vow intends to obligate himself not only to enter the religious order, but also to remain there permanently, he is obligated to remain permanently; but if he intends to obligate himself only to enter the religious order, for the purpose of experiencing [religious life], with the freedom to remain or not remain, it is clear that he is not obligated to remain. But if, in making the vow, he simply thought about entering the religious order, without considering either the freedom to leave or the permanence of remaining, it seems that he is obligated."

[*Latin ed. p. 127*]

Regarding entrance into religious life according to the common law,

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which stipulates that a year of probation be granted to those entering; therefore, one is not perpetually bound to remain in the religious order. However, as noted in section 3, one who enters with the intention of immediately leaving does not seem to fulfill his vow; because he did not intend this in making the vow, and therefore he is obligated to change his intention, so that at least he may try to determine whether it is advantageous for him to remain in the religious life; but he is not obligated to remain perpetually.

Question 3: Whether, if someone has a vow of stability and enters a religious order with the intention of remaining perpetually, but is expelled from the order because he is judged to be unsuitable due to ignorance, illness, and the like, he is released from the vow.

It is to be assumed, as stated by Sanchez in book 4, chapter 16, paragraph 108, and by Salmeron in chapter 2, paragraph 25, that if one has been negligent, he is obligated to use reasonable diligence to correct himself; otherwise, he is not exempt from the vow.

The difficulty arises when one has already used diligence and is still expelled; whether he remains free from the vow.

The first opinion affirms this, and is held by Palotti in book 1, paragraph 4, paragraph 10, Suarez in book 4, chapter 4, paragraph 14, and Garcia, cited by Salmeron in paragraph 26, who consider it probable. The reason is that the one who promised to remain stable has not obligated himself to anything other than applying ordinary means, which he has already applied, and it does not preclude him from remaining stable.

The second, more probable, opinion denies this, and is held by Sanchez.

[*Latin ed. p. 128*]

l. c. n. 82., Laym. l. 4. tr. 5. c. 6. n. 13., Bon. t. 3. d. 4. sess. 2. p. 5. §. 6. n. 22., Salm. l. c. cum Pell. Ratio, quia hic tenetur procurare votum illud implere usquedum apparet probabilis spes implendi; idque non extraordinarium, sed ordinarium est medium adhibere; unde, si ab illa religione ejicitur, tenetur, mediocrem diligentiam apponendo, aliam religionem quærere. Quær. 4. o an qui voverit profiteri, possit a religione exire ex causa non jam urgenti, sed justa, nempe quia talem vitam expertus sit incommodam. Prima sententia affirmat, et hanc tenet Dian. p. 2. tr. 17. r. 10. citans Sot., Reg., Led., Arag. etc., eo quod tale votum intelligitur emissum sub hac conditione, si talis status conveniens sibi videtur. Secunda tamen vera sententia, quam tenent Sanch. lib. 4. c. 16. n. 81., Laym. c. 6. n. 13., Bon. d. 4. p. 5. §. 6. n. 22. et Salm. n. 28. cum Caj., Az., Val. etc., docet hunc teneri ad profitendum etiam cum incommodo, modo non sit tale ut intolerabile videatur. Ratio, quia ita videtur se voluisse obstringere ut non possit egredi si ratio vivendi esset tolerabilis; nam e converso, si difficultatem valde gravem experiretur, non tenetur permanere, cum non videatur se voluisse obligare ad id quod

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sibi est moraliter impossibile. Et hanc candem nostram.

Translation:

l. c. n. 82., Laym. l. 4. tr. 5. c. 6. n. 13., Bon. t. 3. d. 4. sess. 2. p. 5. §. 6. n. 22., Salm. l. c. with Pell. The reason is that here, one is obligated to strive to fulfill that vow as long as there appears to be a probable hope of fulfilling it; and it is not extraordinary, but ordinary means that must be employed; therefore, if one is expelled from that religious order, one is obligated, using reasonable diligence, to seek another religious order. Question 4: Can one who has vowed to remain in a religious order leave that order for a reason that is not urgent, but just, namely, because one has experienced an uncomfortable life? The first opinion affirms this, and it is held by Dian. p. 2. tr. 17. r. 10, citing Sot., Reg., Led., Arag., etc., because such a vow is understood to have been made under the condition that such a state is suitable for oneself. However, the second, which is the true opinion, held by Sanch. lib. 4. c. 16. n. 81., Laym. c. 6. n. 13., Bon. d. 4. p. 5. §. 6. n. 22., and Salm. n. 28. with Caj., Az., Val., etc., teaches that one is obligated to remain even with discomfort, provided that it is not so great as to be intolerable. The reason is that it appears that one has intended to bind oneself in such a way that one cannot leave if the reason for living is tolerable; for on the other hand, if one were to experience a very grave difficulty, one is not obligated to remain, since it does not appear that one intended to obligate oneself to that which is morally impossible for oneself. And this is our own opinion.

[*Latin ed. p. 129*]

The opinions of Lessius, *L. 2, c. 41, n. 46*, and Palearius, *d. 1, p. 4, n. 9*, are held, who are not well cited by Salmeron concerning the first opinion. As for how long those who have taken a vow of religion may, by delaying its fulfillment, sin gravely, see what is said in book 3, n. 221, and question 73, n. 4.

4th. A solemnly professed religious may be granted permission by a bishop or prelate of an exempt order, with the consent of the chapter, to pass to a lesser order, by a dispensative act for a just cause. Layman, *l. c.*, Lessius, *lib. 2, c. 41, n. 103*, and Sanchez, *6 minor, c. 7*.

5th. A solemnly professed religious, having requested (even if not granted) permission from his superior, may, for a just cause, pass to a stricter order. I add this, because such a transition should not be undertaken without a cause, and if it is done, the severity concerning silence and solitude must be considered; and this not only according to the institute of the rule, but also according to the present circumstances. This is proven from *c. Licet, de regularibus*. Layman, Lessius, and Sanchez, *ll. cc.*

From the above, these cases are resolved:

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1st. Canonically regular clerics may pass to the monastic order, and not the other way around, since the monastic life is more austere. Layman, *l. c.*

2nd. A solemnly professed religious, if he cannot observe the stricter rule in his monastery or another of the same order, and there is no hope of reform, may...

[*Latin ed. p. 130*]

To pass to a less strict order in which *regna* is observed: so that, considering the present state of affairs, one may lead a stricter life. Layman, book 4, treatise 5, chapter 6, number 10, from Sanchez, Rodriguez, etc. "It is possible for a religious to pass from his own order to another stricter order, with the requested permission from his superior, even if it is denied; thus, St. Thomas [Summa Theologica] 2-2, question 189, article 8, and the Doctors commonly from the chapter 'Licet' (It is permitted), 18, concerning religious orders, where Innocent III writes: 'After (a monk) has requested permission from his superior to leave... he may freely pursue the purpose of a holier life, notwithstanding any opposition from the superior's imprudent contradiction.' However, the subject must await the superior's response until the time when the superior is able to examine whether he should or should not grant permission. On the other hand, after considering the matter, the superior is bound to grant permission immediately if he sees no impediment. The superior (the Pope adds) ought to grant the subject permission to leave without difficulty or any injustice, lest he seem to be hindering a divinely inspired purpose. Hence, it is commonly taught by Suarez, volume 4, on religious orders, treatise 8, law 3, chapter 10, number 17; Silvestro, 'verb. Religio' 4, question 1, number 5; Pellican, treatise 3, chapter 5, number 139; Paleario, disputations 4, page 26, paragraph 3, number 1; Lezius, volume 1, chapter 22, number 13; Miratus, volume 1, question 51, article 6; Salmeron, treatise 15, chapter 5, number 68, etc., that the superior would sin gravely if he denied permission without a just cause; because...

[*Latin ed. p. 131*]

he would inflict injustice upon his subject, by preventing him from entering a more perfect state; and this is confirmed by the words of Innocent, as related, where it is said that it is a flagrant contradiction for a prelate to unjustly deny a dispensation. We have said unjustly, for there are three just causes by which a superior is permitted to deny a dispensation, according to the words of the same pontiff in the cited chapter, "Licet." And first, if the subject, through temerity or levity, should wish to enter: for example, if he were led by the anger of some offense received, or by the desire of obtaining some temporal advantage. However, in a negative doubt, it is presumed that he proceeds with a right intention, as Suar. says, *loco

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citato*, chapter 5, number 2, and Bonaventure, question 2, paragraph 9, section 3. In a positive doubt, one must follow the judgment of the superior, whether it be the subject himself, or the assembly of prelates, namely, the general or provincial, as the pontiff commands in the same chapter, "Licet," number 2. Secondly, if the entrance involves a detriment to his order: for the common good (the words of the text) is preferred to the private good. But such a detriment is not considered to be that which the order would suffer from the deprivation of that example of a good religious; for if that were sufficient, no one would be permitted to enter a stricter order. By the name of detriment, Salm. number 61, with Portell, etc., understand, for example, if a monk were a doctor or very skilled in some art, so that his absence would noticeably harm the religious life.

[*Latin ed. p. 132*]

3. If, from a change [of order], the religious order would suffer a grave injury or disgrace; so that it would then be notably disdained by others. See Salm., cited, no. 61. I believe that this disgrace is ordinarily absent, if it is clear that the other order certainly surpasses the former in the perfection of its rule. It must be added that it is not permitted for a monk to attempt this change, if the other religious order which he desires would not receive him, according to the decree of Urban VIII (as in the bullarium, vol. 4, constitution 25), who said: "Let him not be permitted to change, unless it is established that that religious order is prepared to receive him." It suffices, however, if there is no impediment, and the permission of the prelate of the religious order from which the change is requested is obtained, as Sylvester says, *De verbis Religiosis*, 4, question 3; Peyr., question 1, chapter 24; and Salm., no. 63. Whether a change without the petition for permission is not only illicit, but also invalid, is affirmed by Less., chapter 41, no. 101; Az., chapter 14, question 6; Sanch., decrees, chapter 7, no. 95, etc. But it is very probably denied by Suar., book 3, chapter 10, page 22; Sylvester, *locus citatus*, question 1; and Salm., chapter 5, no. 67; Bon., Pelliz., etc.; because no right exists that would invalidate this change, and on the contrary, the change itself is valid by natural law, since it is a change for the better.

74. Here, it is necessary to add several useful questions. Question 1: Can a parish priest licitly enter a religious order, contrary to the bishop? This must certainly be affirmed, according to chapter *Duo sunt leges*, 19.

[*Latin ed. p. 133*]

Q. 5: It is stated: If any cleric in his church, under the bishop, retains the people (that is, his own flock, as the Glossa explains) and lives a secular life, if, being moved by the Holy Spirit, he wishes to save himself in some monastery or regular canonry..., even if the bishop objects, he may freely leave, by our authority. Thus, Urban II wrote to Rufinus. The reason for this sanction is given in *Summa Theologica*, 2-2, q. 189, a. 7, which states: "The

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obligation of a perpetual vow takes precedence over all other obligations; and to be bound by a perpetual and solemn vow to dedicate oneself to divine service pertains properly to bishops and religious. However, parish priests and archdeacons are not bound by a perpetual and solemn vow to retain the care of souls, as bishops are." Therefore, bishops cannot abandon their diocese without the authority of the Pope (as stated in *extravagantes*, regulations, etc., c. *Licet*); but archdeacons and parish priests may freely renounce the care entrusted to them by the bishop, without the permission of the Pope. Furthermore, St. Thomas (ad 2. d. a. 8.) cites the following passage from St. Jerome to Vigilantius: "You say: if all withdraw themselves, who will enrich the secular people? Who will be able to exhort the sinners to virtue?" St. Jerome replies: "Virtue is rare, and is not desired by many." All of this is stated as certain by the Most Holy Pope Benedict XIV in his [work].

[*Latin ed. p. 134*]

The bull which begins with "Ex quo dilectus," issued on January 14, 1747 (in the collection of bulls, volume 2, number 69, page 169). Nevertheless, the same Pontiff does not doubt that the parish priest is entirely bound, not merely by his office (these are the words of the bull) and by propriety, but by the precept of natural law, to inform the bishop of his intended vocation, before entering religion, so that the flock may not be abandoned without a shepherd. If, however, the bishop subsequently dissents, the priest will not be prevented (says the Pontiff) from entering religion. Furthermore, he decrees there that the benefice is not considered vacant except after the profession, and in the meantime, the parish priest may enjoy the fruits of it as if he were detained by a legitimate impediment. And he makes the same ruling concerning all other beneficiaries, according to the opinion given by Suarez, *De Relig.*, volume 3, book 5, chapter 16, number 19, and by Sanchez, *Decreta*, book 7, chapter 4, number 7, etc., 75.

Question 2: What is to be said concerning clerics or other beneficiaries who are not rectors?

Answer: Although these individuals are bound by their office and by propriety to inform their bishops of their intention to enter religion, they do not sin, as declared by His Holiness Benedict XIV in the bull cited above, if they omit to do so out of reverential fear, lest they be prevented from fulfilling their desire. It is certainly true that bishops cannot prevent their clerics from entering religion, as is stated in *c. Clerici*, 19, question 1, where it is said, drawing from the Council of Toledo, IV:

[*Latin ed. p. 135*]

Clerics who desire to embrace the way of life of monks, because they seek a better life, ought to be freely admitted by the bishop into the monasteries; nor should those who strive to pass over to the desire for contemplation

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be forbidden. This and similar canons are praised and approved by the aforementioned Holy Father; moreover, he affirms that this is to be understood not only concerning religions of the contemplative life, but also of the active life. However, he declares that the bishop may rightly recall his cleric from the religious life, if his entrance were to be a grave detriment to the church to which he belonged, with these words: "Although the right to relax, in certain cases and for certain reasons, belongs to a superior of a less strict order, so that he may reclaim and recall his subject who has entered a stricter order, even after a solemn profession has been made in it; similarly, in certain cases and for just reasons, it belongs to the bishop to reclaim his secular cleric who has been assigned to a regular order." This is stated by the most illustrious doctor of canon law, Innocent IV, in the aforementioned *De regulis*, whose words are these: "A cleric may pass over to a religious life, even without being granted permission, and even if it is opposed. However, we believe that he may be reclaimed if his departure causes a grave loss to the first church..." Therefore, sufficient provision has been made.

[*Latin ed. p. 136*]

It is also the duty of the bishop to defend the action of one of his clergy who, against his will, has departed for a regular religious house. Furthermore, there occurred a case in which a certain archdeacon entered the Society of Jesus, and the most eminent Cardinal Quirinus, lamenting that this had been done against his will, contended in a complete book published by the printing press that the Pope should declare that clerics cannot enter a religious order without the permission of the bishop. Our pontiff responded, as did the Lord Gregory (in epistle 35, book 12) to another bishop in a similar case, that such clerics should not only not be prevented from their purpose, but rather should be encouraged and strengthened in their perseverance.

76. Question 3. Concerning the cases in which it is permissible for bishops to enter a religious order. It has already been stated above, from the Doctor [Thomas Aquinas] in the cited places, questions 189, article 7, and 185, article 4, that bishops cannot abandon the church to which they have been appointed by a perpetual vow not to leave it, unless by the authority of the Pope and for a just cause, as is also expressed in the decree *Licet*. Just causes, as the Angelic Doctor teaches and as are found in the canons concerning resignation, by which a bishop may renounce his church, are: 1. on account of a personal defect, namely, if he is a simoniac, irregular, or unlearned; or if he is old or infirm; 2. on account of a defect in his subjects, if he cannot be effective among them; 3. on account of the scandal of others;

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but not if...

[*Latin ed. p. 137*]

Scandal arises from the malice of some who desire to trample upon justice. Therefore, it must be said that bishops cannot renounce their churches without any of the aforementioned reasons, even to enter the religious life. And thus, they cannot even exchange churches, as is expressly stated in canon 15 of the Council of Nicaea I; and the same is found in canon 5 of the Council of Chalcedon, and in the second letter to Anastasius. St. Jerome gives the reason in letter 83 to Oceanus, where, mentioning the aforementioned canon 15 of Nicaea, he says: "Let not a poor virgin seek the embrace of a richer adulteress, having scorned the companionship of a poor virgin." Therefore, Cabassus (hist. concil. p. 115) rightly says that these translations were forbidden, because they are attributed to the vice of cupidity, since no one is found who would pass from a richer bishopric to a poorer one. Whether the translation of bishops is forbidden by divine law, see below, n. 104, 77. Here, it is necessary to bring forth two other questions that are supremely useful for practice. Question 4: Do parents sin gravely who turn their children away from the religious state, without just cause? If they turn them away unjustly through threats or force, or through deceit, no one excuses them from mortal sin. However, if the turning away is done only through prayers or promises, Suarez, tract. 3. de rel. l. 5. c. 9. n. 9, believes that this is not a grave sin of its own kind.

[*Latin ed. p. 138*]

Because (as he says), on the one hand, no injustice is involved; for although the son may suffer a serious loss, he does not suffer it unwillingly, but freely consenting; on the other hand, the son is not led to evil, but is merely drawn away from a good thing, which is not necessarily conducive to salvation. But it must be held, with the common opinion of the Doctors, that these parents sin gravely who, whether by deceit or by force, or by prayers or promises, or by any other means, draw their sons away from the religious life. Thus Navarrus, *Manuale*, chapter 14, number 44, with St. Antoninus, Paludanus, Silvestrus, Anglerius, *Tabulae*, and the common opinion; also Mollerus, volume 3, treatise 4, chapter 51, section 2. Secondly, Tournhem, volume 3, page 376, line 2; Abelly, page 344; Salmeron, *De IV. Praeceptis*, chapter 1, number 29; Anaclarius, ibid., 3, page 319, number 19; Sporer, volume 1, page 291, number 21; Elbenius, volume 2, page 195, number 538; Mazzola, volume 1, page 483; Concilii, volume 4, page 222, number 11, with Soto, Navarrus, Aragonez, Sayreras, and Ledo; also, in Leander, book 6, question 17; Trullius, Mirraeus, Fagius, Bordone, and the *Dictionnaire*. And many of these Doctors condemn not only parents, but also outsiders who turn others away from the religious state. The reason is that this cannot be done without causing serious harm to the one who is

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drawn away from the religious life, as Suarez himself admits. Therefore, whether it is done by force or by deceit, or by prayers or by any other means, it cannot be excused from a serious sin. And Suarez himself seems to come to our opinion, when, in the aforementioned passage, at the end, he concludes thus: "Although..."

[*Latin ed. p. 139*]

It is true that this is not so grave a sin; nevertheless, it is undoubtedly a sin greatly contrary to the order of charity and respect for God, from whose greater service man is separated. Therefore, if such a sin is so contrary to the order of charity, who will say that it is not grave? But this reasoning includes not only parents, but also outsiders. However, I believe that parents who turn their children away from religion commit a double grave sin: for, besides the sin against charity, as we have seen, they commit another sin against piety; since they are, by the very office of their education, bound by a grave obligation to the spiritual progress of their children, as Bonaventure rightly observes in *de IV. præc.*, dist. 6, q. un., part. 5, n. 2. Nevertheless, I do not deny that many parents may be excused from mortal sin, at least for a short time, through ignorance or inadvertence, which can easily befall them due to a strong carnal affection for their children. 78. Question 5: Whether and how someone called by God to religion sins if he neglects to fulfill his vocation. We answer that neglecting a religious vocation in itself is not a sin. For divine counsels, in themselves, do not obligate to guilt. However, by reason of the peril of eternal salvation, to which the called person commits himself by making a choice of state.

[*Latin ed. p. 140*]

According to the divine will, no one can be excused from any sin. Indeed, if someone were to believe that by remaining in the world, he would incur damnation, either because of his weakness, which he has experienced amidst the temptations of the world, or because of the lack of assistance which he would have in religion, he cannot be excused from a grave sin, since he places himself in grave danger to his salvation. Thus, Lessius, *De statu vitæ elig.*, q. 8, n. 94, who first says that he who has not yet bound himself by a vow does not sin if he does not enter the religious order to which he is called. However, he adds: "If your conscience tells you (which often happens) that you will be abandoned by God unless you obey the divine call, that you will perish if you remain in the world, etc.; then it is a sin not to follow the divine call." But whether it is in a bad state for the conscience of those who are morally certain that God has called them to religion, to persuade themselves that they can equally easily attain salvation by remaining in the world or by returning to it, it does not seem doubtful that these people expose themselves to great danger to their salvation. For Habert, *De sacr. ord.*, p. 3, c. 1, § 2, speaking of one who does not accept

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the state that God has assigned to him, says: "He will not be able to promote his salvation without great difficulties, and he will remain in the body of the Church as a member in the human body, moved from his proper place."

[*Latin ed. p. 141*]

which it can serve, but with great reluctance and with a certain deformity. Then, he rightly concludes: Although, speaking absolutely, it may be possible to be saved, it will nevertheless find it difficult to enter the path of humility and penance, through which alone the entrance to life is opened. Therefore, Saint Gregory, writing (hom. 26 in evang.) to Emperor Maurice, who, through his edict, had prohibited soldiers from becoming religious, wrote that this law was unjust, and that it closed heaven to many: For there are many (in the words and reasoning of Saint Gregory) who, unless they leave everything, cannot be saved with God. The reason for this danger is that those who remain in the world against God's call will not have the proper aids of grace, which God has prepared for them in religion; and therefore, forsaken by Him, they will find it difficult to resist the temptations of the world and, thus yielding, will incur damnation. Furthermore, if anyone dissuades another from entering religion or encourages him to leave, even without force or fraud, he sins mortally, as we saw above in the preceding question, according to the common teaching of the Doctors, because he would lead the one called to suffer a grave harm, even if that one entirely of his own free will endures it; I do not know how he himself can be excused who inflicts such harm upon himself. However, I do not wish to offer an absolute judgment on this point; I leave it to the wise. In the meantime, let us earnestly pray to God that He may deliver us from this.

[*Latin ed. p. 142*]

May His mercy entirely avert us from such a fate; for in countless calamitous events, we read in history the tragic execution of the threats pronounced by the Scriptures against those who forsake such a divine vocation. For in Isaiah it is written: "Woe to you, apostate children, saith the Lord, that you would take counsel, and not of me: and would begin a web, and not by my spirit, that you might add sin upon sin:" (Isa 30:1). In Job, it is said: "God will not greatly depart: they were rebellious to the light, and they knew not his ways." (Job 14:14). And in the Book of Proverbs, this is expressed more clearly in chapter 1, verse 24, and following; where every word deserves attention: "For I will offer my spirit in my vows..." (behold, the divine vocation)... "because I have called, and you have refused..." "You have despised my counsel..." "And also I will laugh at your calamity, and I will rejoice in your tribulation; when you come to be as one of them, and your fear comes upon you." When a sudden calamity and destruction shall come upon you, as a tempest; when tribulation and

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anguish shall come upon you: then they will call upon me, and I will not hear them. They shall rise early, and they shall not find me; for they have wearied themselves in discipline, and they have not attained to my counsel, and they have despised all my correction." (Note that God speaks here not of a precept, but of discipline and counsel). (Here are condemned those who, thinking themselves secure in every state, claim to attain salvation without any effort).

[*Latin ed. p. 143*]

They shall taste the fruits of their own ways, and they shall be filled with the consequences of their own counsels. (For the punishment of those who choose a state not according to the divine will, but according to their own counsel, will be this.) The destruction of little ones will kill them, and the prosperity of fools will destroy them. (These men will rush to whatever light temptation the world offers, and even the goods of the world will serve them for their destruction.) Hence, St. Bernard speaks thus to those called to religion: Chastity is endangered in delights, humility in riches, piety in business, truth in much talk, and charity in the wicked world. Flee from the midst of Babylon, and save your souls. From all these things, I wish that those who neglect their religious vocation diligently consider whether they ought to be terrified, and whether they are not in a bad state. But you will say: therefore, are all not bound to enter religion, that they may be saved? Answer: and I distinguish: if you speak of those who are not called, certainly they are not bound; for God will provide them in this world with suitable aids for salvation; but if you speak of those who are called, I say they are bound; for God will deny to them those aids which He had prepared for them in religion, and deprived of these, although they might be saved by ordinary means, in fact they will find it difficult to attain salvation, as St. Cyprian says: The power of the Holy Spirit is administered according to His order, not according to our will.

[*Latin ed. p. 144*]

DOUBT OF SEXTUM. CONCERNING WHAT RELIGIOUS PERSONS, HAVING BEEN EXPELLED AND FUGITIVES, ARE BOUND. 79. For what reasons may religious persons be expelled from their order? 80. What may be acquired by those who have been expelled; what by apostates? 81. To what are those who have been expelled bound? 82. To what are prelates bound with regard to apostates or those who have been expelled?

79. I SUPPOSE that a religious person may be justly expelled from his order: 1. either if, being guilty of a grave or pernicious crime, he appears manifestly incorrigible; in which case, however, Sanch. holds that monks are to be kept perpetually in prison rather than expelled, *lib. 6. de morib. cap. generalis*: 2. either if, because of the infamy of the crime, he cannot be tolerated without a grave detriment to the order: 3. either if, at the time of

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his admission, he concealed an impediment, whether essential or at least very grave, such as leprosy, etc., as Navarrus, Sahagún, and others teach, *v. Religio, n. 34*; Sanch., *6. de morib. cap. 4. n. 56*. The reason is because he deceived in a matter of great importance, so that the fraud gave cause for his admission. See Diána, *par. generalis, tom. generalis, respons. 57*. Where it is taught that, although hitherto, according to the common opinion of Sanch., Suar., Azor., Rodr., etc., religious persons may have been expelled for some grave offense, even if committed only once, nevertheless, because of the declaration of Urban VIII, issued in the year 1624...

[*Latin ed. p. 145*]

"By no privileges can [religious] persons be expelled from their order (except those of the Society of Jesus), unless they are incorrigible; but such are not considered to be so, unless they have been proven by a year of fasting and penance in prison." With this premise, a religious person, expelled from their order for fault, remains a religious, bound by their vows. Layman, book 4, treatise 5, chapter 13, according to common law. "From this, these cases are resolved: 8th. 1st. A person expelled from an order can only claim the use and administration of the things they acquired for themselves, but not ownership; nor do these things belong to the monastery, since they are no longer a member of it, but to the Church in which they hold the benefice; or to the Pope, if they do not hold a benefice and are exempt. If they are not exempt, then to the local bishop. Layman, book and chapter, from Moller and Lessius." I said "expelled," because fugitives and apostates, except for those who have received something by ecclesiastical benefice, truly belong to the monastery, if that monastery is capable of possessing property in common; otherwise, to the Apostolic See. The reason is that the monastery, like servants, could reclaim and restore them. Layman, cited above, Azorín, Silvaticus, etc. 8th. 2nd. A person expelled for fault is not entirely released from the vow of obedience, although its execution ceases to a great extent; because they lack..."

[*Latin ed. p. 146*]

From which he may be guided. However, he must observe this in the preparation of his soul, if he is received. Laym. l. c. from Nav. and Less. » 3.º He is also exempt from the other monastic observances and rules; such as from fasts, vigils, the choice of food, and similar things; Laym. l. 4. t. 5. c. 14., Sa n. 40., Nav. and others (with Bon., Lez., Pal. and Salm. de stat. rel. c. 5. n. 94.). He is not bound to the divine office, unless he is in the sacred enclosure, as Salm. de horis c. 2. n. 10. The same is said of one condemned to the galleys; ibid. The same is said there by Lez., Bon., Sot. etc. concerning one who perpetually resides outside the monastery with permission: but this is more probably denied by Pal., Suar., Nav. with Salm. l. c.) contrary to Less., Sanch. etc. The reason is, because such observances do not simply

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accompany the profession of essential vows, but the regular state, from which he is expelled. » 4.º Although it is not improbable that Nav. and Az. teach, and that Rodr. approves, that one ejected may safely remain outside his order and is not bound to petition for reception, because he can conform to the just sentence of his ejection: nevertheless, the contrary is more common and more probable. The reason is, because, being bound by vows, he is obligated to qualify himself so that he may properly fulfill his vows in accordance with his profession. (Therefore, he is obligated to correct himself. Salm. d. c. 5. n. 102.) This reason is more probable, if the order itself revokes him.

[*Latin ed. p. 147*]

Layman, in the cited passage, number 6, drawing from Silvestri, Sanchez, and Lessius, states: "One can be safely dismissed from religious life and remain in the world, provided he is not received into a monastery, unless he prefers to embrace a less strict form of religious life; for he has not made a vow to any particular order, nor, as I suppose, does his situation preclude his being received into another." Thus, Rodriguez, Layman, and others, in the same place, add that superiors can dismiss someone under the condition that he either enter another religious order or return to his former life; indeed, even the local ordinaries can compel the dismissed to do so. The reason for this is that such individuals, if allowed to remain in the world, do so with danger and scandal to others. See Layman, in the cited passage, number 8, and the collection, number 82, response 2. Superiors of religious orders are obligated to seek out those who have fled or apostatized, if they can do so without causing serious harm to the order, and if those individuals do not appear to be entirely incorrigible. Thus, Sanchez, in the cited passage. The reason for the first part of this statement is that superiors are bound by divine and natural law to consider the salvation of these individuals. The reason for the second part is that, if they can be dismissed for a just cause, they can also be refused readmission after they have maliciously left. Layman, in the cited passage, number 7, and Sanchez, and others, state: "I have said 'fled' and 'apostatized' because, according to a just judgment, those who have been dismissed, even if they have reformed themselves, are necessarily to be refused readmission." Sanchez, in the cited passage, and Azorín, book 12, chapter 17, affirm this; Navarret, Molina, volume 1, question 140, and Lessius, book 2, chapter 41, question 15, state this, both with probable arguments.

[*Latin ed. p. 148*]

"Quaeres si religiosus in uno monasterio possit cogi ut se transferat ad aliud." "Respondeo: posse, si plura monasteria faciunt unum corpus sub uno capite; alioquin, si singula subsint suis superioribus sub episcopo vel immediate sub papa. Ratio est, quia non vovit obedientiam nisi in hoc con-

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ventu. Laym. l. 6. n. 10. Vide etiam Sanch. lib. 6. mor. c. 32."

"CAPUT II. DE STATU CLERICORUM. Clerici generaliter dicuntur illi qui sacris ordinibus vel prima saltem tonsura sunt initiati. Ad quorum statum cum multa pertineant de quibus alibi agendum, hic agentia de beneficiis ecclesiasticis, horis canonicis et aliis paucis."

"DUBIUM PRIMUM. DE BENEFICIIS ECCLESIASTICIS. ARTICULUS PRIMUS. QUID ET QUOTUPLEX BENEFICIUM ECCLESIASTICUM. 83. Quid est beneficium. 84. Quotuplex est. 83."

"RESP. 1.° Beneficium ecclesiasticum est jus perpetuum percipiendi fructus ex..."

[*Latin ed. p. 149*]

"Benefices, by reason of some spiritual office established by the authority of the Church. Thus, Layman, book 4, part 2, chapter 1; Lessius, book 2, chapter 35, de titulo. It is said to be 1st, a perpetual right: because in a benefice, two rights are distinguished, which are mutually separable. The first is the right or power of exercising a spiritual office, and this is simply spiritual. The second is the right of receiving ecclesiastical revenues; which, although in itself it may be temporal, inasmuch as it is founded on a spiritual office and annexed to it, participates in some spiritual quality. It is said to be 2nd, by the authority of the Church, etc.: because it is only to the prelate that it belongs to establish offices in the Church and to attach ecclesiastical revenues to them; and it is his duty to consider how many and what kind of ministers the Church needs."

"84. Answer 2nd: A benefice is divided 1st into a secular benefice, which is established for secular clergy, and a regular benefice, which is established for religious. Therefore, without dispensation, neither a secular benefice can be conferred on a regular cleric, nor a regular benefice on a secular cleric. Furthermore, every benefice is presumed to be secular, unless it is proven to be regular, either from its original institution or by peaceful possession for 40 years; for through such possession, a secular benefice becomes regular, and vice versa."

"2nd: A benefice is also twofold, either simple or complex. A complex benefice is one that includes administration, such as a papacy, an episcopacy, and..."

[*Latin ed. p. 150*]

All those things which are said to pertain to dignity, that is, those which have precedence with jurisdiction in the external forum, such as a prebend, a deanery, an archdeaconry, an abbey, whether secular or regular, or a priorate. Also, a personal dignity, which is a precedence within the Church without jurisdiction, for example, an honorary position in the choir, in processions, in offering the suffrage, such as a cantor and similar offices. Also, benefices which are said to be offices and which have the administration

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of ecclesiastical affairs without jurisdiction, such as a custos, a treasurer, a primicerius, an archpriest. Finally, benefices are said to be "curated"; for all these are considered to be burdened with a double duty and care, since, besides the recitation of prayers common to all, they have some administration and precedence. Simple benefices are those which are instituted only for the performance of divine offices, and which have neither administration nor special precedence; such as canonries, whether secular or regular, and chaplaincies. See Layman, *loc. cit.*, and Lessius, book 2, chapter 54, section 2.

ARTICLE SECOND. HOW BENEFICES ARE ACQUIRED AND CONFERRED.

85. In what ways are benefices acquired?

86. Who are the proper collators of benefices?

87. What is the nature and extent of the right of patronage?

88. When is the patron obligated to present a candidate?

[*Latin ed. p. 151*]

89. During the pendency of a legal dispute, the time for presentation [of candidates] should run.

90. What is to be done if many [candidates] present themselves?

91. Do those who do not present candidates who are more worthy for benefices sin? It is certain in the case of those who promote to the cardinalate and episcopate.

92. It is also certain in the case of bishops who do not choose the more worthy for parishes.

93-96. What, if an election is held for simple benefices?

97. Do patrons who do not present more worthy candidates sin gravely?

98. Are those who resign also bound to the same [obligation]?

99. The truer opinion.

100. Is it permissible to choose the more worthy for regular prelatures?

101. The true opinion.

102. Is the election of a worthy candidate, even if a more worthy one is passed over, valid?

103. The more probable opinion.

104. Should more worthy bishops be transferred to larger churches? And here, is the translation of bishops forbidden by divine law?

105. What, if there is no just cause [for the transfer]?

106. Are those who choose a less worthy candidate obligated to make restitution? And to whom?

107. Is the negative opinion probable?

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108. Are those who advise such a choice obligated to make restitution?

109. What, if the benefice is conferred through collusion?

110. In that case, are those who are miraculously chosen worthy obligated to compensate the church or the more worthy candidate for the damage?

111. Are the examiners obligated to report the more worthy candidates?

85. » R ESP. 1.º Ecclesiastical benefices are commonly acquired in one of three ways: 1.º By election, for example, of canons; or

[*Latin ed. p. 152*]

Even the petition (which is the election of one who was not of the chapter or by law was not capable) and the confirmation of the superior, if the elected or petitioned one is understood to be suitable. 2. By the presentation of a patron, with the subsequent institution, made by the ecclesiastical superior, if the presented one is suitable. Although the patron confers a right to the thing, so that the benefit cannot be conferred upon another; nevertheless, the right in the thing and the collation of the benefit are given by the institution. 3. By free collation, when the benefit is given solely by law to the prelate, and no patronage is involved. Hence, also, benefits are divided according to the manner of conferring them into elective, patronal, and free.

86. "Response: 2. In every diocese, the bishop is the proper collator of benefits, unless by legitimate prescription this right belongs to another; but the supreme and universal collator of all non-patronal benefits is the Pope. Less. lib. 2. c. 35. d. 10. The first reason is because the bishop in his diocese is the administrator of the sacred things: therefore, it is his office to confer sacred things. The second reason is because the Pope is the supreme dispenser of ecclesiastical goods and the ordinary of ordinaries. The Pope can confer benefits in three ways: 1. by the right of prevention; 2. by the right of concurrence; 3. by the right of devolution; see Less. l.c., where he notes the right of prevention and..."

[*Latin ed. p. 153*]

In cases of dispute, recourse to the Pope is less frequent; indeed, through concordats with Germany between the Apostolic See and Emperor Frederick, and through the constitution of Nicholas V, which begins: "Ad sacra," etc., only alternate months are reserved to the Pope for appointments, namely January, March, etc., while the remaining months are left to the ordinary bishops. Moreover, if, within three months from the date of the notice of the vacancy, no appointment or grant from the Pope appears in the place of the benefice, the ordinary bishop may make the appointment. Similarly, upon the death of the Pope, as long as the See is vacant. Less. l. c., Laym. c. 20. However, if both the Pope and the ordinary bishop should offer the same benefice on the same day, and the priority of

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neither appointment is evident, the one who is found to be in possession is to be preferred; for the law presumes his right. If neither is in possession, the one appointed by the Pope is to be preferred, due to the dignity of the appointee: Barb. et Bard. d. 6. c. 6. §. 10. ex c. Si a sede. Finally, if the episcopal benefice begins to be vacant on the last night of the month, in the case of doubt as to whether it is before or after midnight, when the month of the Pope begins, if no one is in possession and no provision has been made, the presumption of the law is in favor of the ordinary bishop. Gonzal., Barb., Bard. d. 6. c. 6. §. 11. » 87. » Questions: 1.º What is the extent of the right of patronage? » Answer: 1.º It can be the power of presenting [a candidate].

[*Latin ed. p. 154*]

Concerning a vacancy in an ecclesiastical benefice.

Response 2. There are two kinds of patronage, namely ecclesiastical patronage and lay patronage; that which belongs to one who, from his patrimonial possessions, founded, endowed, or erected the church. Laym. l. 4. tr. 2. c. 13. n. 2. and 4. "88. Question 2. When is the patron obligated to present a candidate when the benefice is vacant? Response: If the patronage is lay, he is obligated within 4 months (from the chapter "Quoniam," concerning the law of patronage); if it is ecclesiastical, within 6 months (from the chapter "Verum," concerning the law of patronage, in book 6; if it is mixed, also within 6 months, as stated by Salm. de benef. c. un. n. 275.), within which time, if presentation is not made, the benefice becomes free, and the disposition of it for that occasion devolves to him to whom it was originally intended to be presented. "89. Question: Does the time for presentation run when a dispute arises concerning the right of patronage? The answer is no, if the dispute is between the bishop and the patron, or between the candidates themselves. Otherwise, if the dispute is between patrons, for example, if they do not agree on the presentation; or if it is contended who has the right to present. Salm. tr. 28. de ben. c. un. n. 277. with Az., Zer., etc., from the chapter "Quoniam," concerning the law of patronage. However, Salm. notes there, with Barb., that the bishop can, through others, extend the designated time by another 6 months, but no longer, according to chapter 2, concerning concessions of benefices. "90. Question 3. What is to be done if many present themselves?

[*Latin ed. p. 155*]

Response 1. If a patron who previously presented Peter, presents Paul afterwards, and wishes the latter to be preferred, the prelate can decide which he prefers, if the patronage is lay; because then the second presentation does not invalidate the first, nor vice versa. However, if the patronage is ecclesiastical, the one who presented first in time will have greater right, according to chapter *Cum authent.*, concerning the right of patronage.

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Response 2. If two patrons present Peter and John respectively, the bestower can confer the benefit upon whichever he prefers. (But he ought to prefer the more worthy, even if presented by the lesser number of patrons, according to chapter *Quoniam*, concerning the right of patronage. See further below, in the following paragraphs.) Indeed, according to Silv., the bishop can even confer it upon a third person, if the patrons do not agree. See Less. l. c. d. 8., Laym. loc. cit. » 91. Here, it is necessary to discuss several questions which are most important concerning the conferral of benefices.

Question 1. Is there an obligation to choose the more worthy for benefices? It is certain that 1.º in no way are those excused from mortal sin who promote the less worthy to the episcopate and cardinalate. This is derived from the Council of Trent, Session 24, chapter 1, where it is declared: "All and each of those who have any right or jurisdiction, by any means, for the promotion of those to be appointed..."

[*Latin ed. p. 156*]

Those who hold ecclesiastical offices, or otherwise exert themselves, should, above all, remember that they can accomplish nothing more useful for the glory of God and the salvation of souls than if they strive to promote good pastors and those suitable for governing the Church. And those who, by participating in the sins of others, commit mortal sin, unless they judge those whom they promote to be more worthy and more useful to the Church, must diligently take care to place before them, not through prayers or human affections or the suggestions of those around them, but through the merits demanded by the situation, those who are truly deserving. From this it is clear that it is a grave sin for bishops and kings to promote those who are not worthy of such offices. The reason is that, since the aforementioned benefits or offices are established for the common good of the Church, those who neglect to choose those more suitable for the governance of churches greatly diminish that good. This is confirmed by Proposition 47 of the *Denzinger*, by Pope Innocent XI, which states: "When the Council of Trent says that those who, unless they judge them to be more worthy and more useful to the Church, promote others to ecclesiastical offices, commit mortal sin by participating in the sins of others, the Council either, in the first place, does not intend to signify anything other than the dignity of those who are chosen, using the comparative 'more worthy' in place of the positive; or, secondly, uses the word 'more worthy' in a less precise way, intending to exclude the unworthy, but not necessarily to include the worthy; or, finally, speaks in the third instance when a concurrence of circumstances occurs."

[*Latin ed. p. 157*]

92. It is certain that bishops are equally bound to choose those who are more worthy for benefices. The reason is the same as that stated above,

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since the salvation of souls also pertains to the parish priests. And this is also clearly stated in chapter 18 of the Council of Trent, session 24, where it is said: "From among these, the bishop shall choose him whom he judges to be more suitable than the others." From the words of the Council of Trent mentioned first, it is rightly inferred, in accordance with St. Thomas [Summa Theologica 2-2, question 63, article 2], Salmeron [Apparatus in Decreta de Beneficiis, no. 307], Soto, Cajetan, etc., that the greater dignity of those to be chosen is not to be taken absolutely, but rather in relation to the benefit of the Church and the faithful. Furthermore, Salmeron, in the aforementioned passage, along with Barbatus, Hurtado, etc., state that, all other things being equal, the following should be considered more worthy: 1st, he who is older; 2nd, he who has founded the church from his own goods; 3rd, a priest in comparison to a non-priest; 4th, a native in comparison to an outsider; 5th, one who has attained a degree in some science; 6th, he who is endowed with greater sanctity or prudence should be preferred to one who excels only in science; 7th, a person of influence and nobility, because these qualities often contribute greatly to the good of the Church; 8th, a poor person should be preferred to a rich one. Finally, Passavanti, Le Tourneau, and Sigismund, apud Eroix, book 4, no. 594, note that if one is probably more worthy, but there is doubt that he is less worthy than another who is certainly worthy, then the one who is certainly worthy can be preferred.

[*Latin ed. p. 158*]

93. It is doubted 1. whether bishops sin mortally when they choose those less worthy for simple benefices, omitting those more worthy. There are two opinions on this matter. The first opinion, which is probable, holds that they do not sin: because, since benefices are not instituted (at least primarily) for the good of individuals, but for the benefit of the community, a slight harm is done to the community if they are conferred upon the worthy, while those more worthy are passed over. Thus, Navarrus writes in *Collectanea*, book 2, chapter 2, paragraph 172; Salmeron in the *Glossary* under "Beneficium," paragraph 42; Sotus in *Tractatus de Justitia*, book 3, question 6, article 2; Elbing in *Tractatus de Matrimonio*, book 2, page 507, article 2; Sanchez in *Consilia*, book 2, chapter 1, doubt 2, paragraph 20, with Salona; and also Gabrio, Alen, and Abulafia, as well as Dic, Hurtado, and Vega, cited by Salmeron in *Tractatus de Beneficiis*, paragraph 312. Salmeron considers this opinion probable, as does the Cardinal in the *Dictionarium*, proposition 47, and Innocent XI in number 9. Regarding the text cited by opponents in chapter 1, "Ut Ecclesiae Beneficia sine diminutione," where it is said: "You ought to have conferred the benefice upon a more suitable person," Lugo in *Tractatus de Justitia*, book 35, paragraph 11, responds that the bishop is not reproached by the pontiff because he did not confer the benefice upon a more worthy person, but because he

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conferred it upon one who was not suitable, as can be gathered from the beginning of the same canon. Regarding other texts that are opposed, it is responded that they do not contain a precept, but only an instruction. There are those who assert that there is no sin in choosing, for simple benefices, even

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less worthy, as Navarrus, Leduchus, Guttierrez, Garcias, Navarus, and Diana, in *Card.*, number 9, who still considers it probable; but I believe that in this matter, one should not deviate from the common opinion, which at least does not excuse it in the case of venial sin. Indeed, Sanchin, number 21, and *Controversiae Tournaisiennes*, volume 1, page 760, rightly condemn the practice of choosing a less worthy person for a canonry to which is attached the office of hearing confessions, or preaching, or teaching. However, the second opinion, which is more common and more probable, teaches that those who are more worthy should be chosen even for simple benefices, under a grave obligation. Reason 1: because, as St. Thomas says in *Summa Theologica*, 2-2, question 63, article 1, an ecclesiastical prelate is not the *owner* (of benefices), so that he can give them at his pleasure, but rather a *steward*, etc. Therefore, he sins who distributes benefices to others rather than to those who are more worthy, who have a stronger right to them; for if it is true (as the Doctors commonly state) that benefices are instituted not only for the common good, but also (although less principally) as rewards for merit, it is clear that those who promote the common good more greatly have a greater right to them. At the very least, benefices are common goods, and, as such, they are also due to those who excel in merit. Reason 2, which is more persuasive to me and to Lugones (who does not at all agree with the aforementioned first reason), is that the very utility of the Church, for which benefices exist,

[*Latin ed. p. 160*]

Institutions, after considering the matter, demand that those who are more worthy be promoted; otherwise, the clergy would have little incentive to strive to become more worthy, and thus the benefit to the Church would be greatly diminished; and this loss appears to be not insignificant, but rather considerable. Thus, Lessius, *lib.* 2, *cap.* 33, *dub.* 14; Lugo, *de justitia*, *disp.* 35, *n.* 10; Palearius, *tractatus*, 13, *disp.* 2, *p.* 11, *n.* 8; Holzmüller, *tomus* 1, *p.* 432, *n.* 419; Croix, *liber* 4, *n.* 588; Viva, *in propositionibus* 47, *Innocentii XI*, *n.* 6 et 9; Roncaglia, *de beneficiis*, *cap.* 5, *quaestio* 9, who, after examining the matter, believes that it lacks a strong basis for being considered contrary to reason; also, Salmeron, *de beneficiis*, *n.* 314, citing St. Antoninus, Cajetan, Azorín, Fillón, Garz, and many others. 94. However, Doctors and authorities state that it is not a mortal sin, firstly, if a more worthy person is overlooked not generally,

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but only once, or in certain circumstances, as Lugo, *loco citato*, *n.* 21; Navarret, Azorín, and Fillón, apud Croix, *de*, *n.* 588; also, Lessius, *loco citato*, *n.* 66, citing Alen, Soto, Sa, Gabr, Angel, Navarret, and Aragó, speaking of simple benefices, such as chaplaincies, and even canonries; but not of those to which a jurisdiction or function of great importance is attached, as mentioned above. The reason is that, in such cases, little harm is done to the Church. However, this must in no way be admitted in the case of curacies; for which, in general, the harm to the Church would be considerable. Indeed, Vasquez, Covarrubias, and Cajetan hold that this is a mortal sin even in all benefices.

[*Latin ed. p. 161*]

For the simple reason that, even in a grave matter, distributive justice would be violated. On the contrary, Lessius, in *Commonitorium*, number 65, states that one does not have such a strict right to these benefits that its violation constitutes a mortal sin; for, as Soto asserts, the violation of distributive justice is not always mortal, unless it also involves a violation of commutative justice. 95. They limit this in two ways: firstly, if the excess of dignity is small; because then the damage is considered slight. Thus Lessius, number 64, and Lugo, number 21, who agree with Navarrus, Soto, Gersón, Navarrus, and Silvestrius, and Sanchinius, in *Dubia*, 2, number 326, as well as Aragó, Palencia, Prado, etc. And in this case, they say that the election does not exceed venial sin, even if the electors have sworn to choose the more worthy. As Salmeron agrees with Soto, Sanchinius, Palencia, and Lugo, who, in number 23, admit this in these two and the following limitations. However, this limitation is by no means admissible with regard to benefices with cures. 96. They limit this in a third way: if the benefices are of little importance, as Lugo states from number 21, in agreement with Navarrus, Silvestrius, Gersón, Aragó, Salon, and Viva, in *loco citato*, number 6; also Lessius, Rega, Rebellin, and Maldonato, apud Croix, number 588; also Soto, Valentia, Banniz, and Rodriguez, apud Dian, page 5, translation, number 5, reason 13. They limit this in a fourth way: if, by the law of the foundation, someone must be chosen from a particular family, college, or town, as Tournhem states, volume 1, page 762.

[*Latin ed. p. 162*]

With Silvio. They limit the fifth case: if a more worthy candidate is foreseen, the benefit should be relinquished, as Holzm. p. 432, n. 421, states, and as Pichl. 97, Dub. 2, states. The second doubt is: are patrons obligated under pain of mortal sin to present the more worthy candidates for benefits? A distinction must be made between curated and simple benefits. If the benefits are curated, it is certain that: 1st, patrons, such as kings, are obligated to do so, according to the account in chapter 1 of the 24th session of the Council of Trent, as mentioned above, where the Council declared

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this – concerning all those who promote [candidates], as we saw in n. 91. It is certain that 2nd, if the patrons are ecclesiastical, they are also obligated to present the more worthy candidates, as the Council decreed in chapter 18 of the aforementioned session. However, it is doubtful if the patrons are laymen. The first opinion, held by Pal. tr. 13, disp. 2, p. 7, n. 6, and by Garc., Nav., and others apud Salm. de benef. n. 281, is that they are not obligated to present the more worthy candidates, whether the benefit is simple or curated. They argue from the Council of Trent, decree 18, which states: "But if the right of patronage belongs to laymen, he who is presented by the patron must be examined by those appointed by them, and must not be admitted unless he is found to be suitable." Therefore, Pal. argues, the Council does not impose any other obligation on the layman than to present someone suitable. They also support this with chapter 33, cause 17, question 7, which states: "It is permissible for a priest to commend to the bishop, with the bishop's consent, someone he wishes for the sacred office of that diocese, provided that he is not considered wicked." In.

[*Latin ed. p. 163*]

With these words, the Glossa comments: "It suffices for someone not to be wicked"; as the Glossa also notes in chapter *Licet cas.* 8, question 1. However, it must be entirely held that, concerning benefices with cures, the patron, even if still a layman, is strictly bound to present someone more worthy. This seems certain to me; because in these benefices, the same reason applies as in bishoprics, for which Trent has already declared, as we saw above, that those promoted by any patrons are to be considered more worthy. And this seems clearly confirmed by the canon *prop. damn.* 47, as mentioned above (as Croix rightly points out, no. 583), which must be understood from the words—when there is a concurrence—not only concerning bishoprics, in which there is no concurrence, but also concerning benefices with cures, which are conferred through concurrence. If, however, the benefices are simple, as is probable, it is not held that bishops are strictly bound to confer them upon more worthy candidates; so too, it is probable that patrons are not strictly bound to do so. But because it is more probable, as we said, that they should be conferred upon more worthy candidates; it is also more probable that patrons are strictly bound to present more worthy candidates. The strongest reason, as Sanch. rightly says in book 2, chapter 1, doubt 5, no. 3, is because otherwise the same inconveniences would arise as follow from the fact that the electors do not choose the more worthy candidate, as we have already noted; because otherwise, the bishop cannot...

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To reject a presented candidate, if he is suitable, even if a more worthy one is overlooked. Our opinion is held by Sanch. in the cited work, Croix,

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no. 584, Viva in the cited place, question 4, and Salm. with Mol., Ban., Vasq., Azor., and Less. And the same opinion is held by Lugo, in the cited work, doubt 35, no. 39, although he makes an exception for chaplaincies which someone has established at will in some chapel of his family, contrary to Mol., Azor., and Vasq., as cited by Viva, in the work "De Beneficiis," question 4, article 2, no. 5; because this is granted only to founders, and not to their successors.

98. Doubt 3: Whether those resigning from benefices must also seek out a more worthy candidate. On this point, there are diverse opinions. The first opinion, held with Sanch. in "Consilia," book 2, chapter 1, doubt 7, no. 4, Less. in the cited place, book 2, chapter 34, no. 61, with Caj., Pal. in "Tractatus," 13, dispute 2, page 11, § 2, no. 11, as well as Azor., Hurt., Mercad., and Salon, as cited by Salm., no. 330, and Lugo calls it the "common opinion" in doubt 35, no. 49, with Malder., Sa, and Diana; and Lugo himself calls it "probable" with Vasq. The reason is that the one resigning or transferring a benefice is not a distributor of the common good, but of his own good; therefore, he does not sin against distributive justice. Nor does the bishop sin when conferring a benefice to a suitable person who is resigning; because at that time, he is not obligated to seek out a more worthy one; for the decrees concerning the selection of a more worthy person speak of collation through a vacancy, and not through resignation. However, Less. in the cited place, says that if...

[*Latin ed. p. 165*]

It is offered as a more fitting course of action for the resigning person to, out of charity towards the common good, prefer that which is more suitable. The second opinion, which is entirely opposed, absolutely affirms that the resigning person ought to seek that which is more worthy. This is held by Soto in *De Justitia*, book 3, question 6, article 2; by Viva, *loco citato*, number 13; by Cont. Tourn., volume 1, page 762; and also by Vasquez and Palencia, apud Salm., number 329. The reason is that, although the resigning person would not sin as the bestower of the benefit, he would nevertheless sin, because he would be the cause of an illicit bestowal: otherwise, the bestower, who is certainly not obligated to accept such a resignation, would not be excused from sin if he accepted it for someone who is barely worthy, when a more suitable person could easily be found to whom the benefit could be conferred; therefore, the resigning person also sins, by cooperating in the sin of the bestower. The third opinion, which is held by Nav., book 2, chapter 2, number 173, and by Salm., number 331, together with Vasquez, admits that a resignation can only be made to a less worthy person if the resigning person is equally worthy, because in that case, no harm is done to the Church. 99. But of all these opinions, the opinion of the most learned Lugan seems to me to be the most just, namely, that the entire reason for culpability in this matter must be derived from the reason

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for the harm that would be done to the Church. The reason is that, since the intrinsically principal end of the institution of benefices is...

[*Latin ed. p. 166*]

As has been demonstrated by all (according to statements n. 93, and book 3, n. 492), the Church, when bestowing offices, confers them with the condition that those who hold them, should they wish to relinquish them, must do so only for the common good; and this end cannot, intrinsically, be neglected without fault. Therefore, it rightly follows that such resignations, especially in benefices with a cure of souls, and particularly in bishoprics, are rarely permissible; firstly, because they are rarely without a serious detriment to the common good; secondly, because these elections are not made with that diligent inquiry into merits with which the aforementioned benefices are conferred through vacancies; thirdly, because, for the most part, they involve the retention of a pension, which turns to the detriment of the poor; and finally, because they are often from older individuals to younger ones, from which it subsequently follows that, when more worthy individuals are elected to benefices after the death of those who have resigned, only less worthy individuals are elected: all of which certainly leads to a serious detriment to the common good. However, if it could be judged from the circumstances that in some case no detriment, or only a slight detriment, to the Church would result from a resignation made to a less worthy individual, when no more worthy individual could be found, then, as Lugo rightly says, the one resigning and the bestower can be excused from at least grave fault. And to this opinion also adheres Croix, book 4, n. 586, 100. Question 2, on whether it applies to regular prelatures.

[*Latin ed. p. 167*]

It is also necessary to choose those who are more worthy. The first opinion, which is contrary to Hurtado, Rodriguez, and Valerius, as cited by Salm, number 33, a, states that this is not the case unless it concerns a generalate or a permanent prelature. However, with regard to removable prelatures, they say that there is no obligation to choose the more worthy; first, because there are already rules in religious life, and therefore it is sufficient that the subjects be governed according to those rules, which a worthy prelate can certainly accomplish, without necessarily being the most worthy; and second, because if any harm were to result from this, the prelate can easily be removed. Lugo, in his work, number 33, number 56, adheres to this opinion, in the case where the subjects are so observant that a prelate who is not the most worthy, but simply worthy, can safely preside over them.

However, it must be affirmed, in accordance with the common opinion, as Lugo himself asserts; and this is held by Soto, book 3, question 6, article 2, conclusion g; Navarrus, book 2, chapter 2, number 159; Cardinal [Turrecre-

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mata], in the aforementioned work, number 5, where he notes it as certain; Viva, in his dictionary, proposition 47, number 10; Roncaglia, chapter 5, question 7; Sanchez, doubt 2, number 27; and also Croix, book 4, numbers 582 and 589; and Salm, number 333, along with Vasquez, Peyra, Villalobos, Fernádez, and others. The reason is that the same principle applies to regular prelates as it does to bishops, namely, the good of the community and of the subjects, towards whom the prelates are as bishops. It is not entirely correct to say that, when rules are present, it is sufficient for the prelate to attend only to those rules.

[*Latin ed. p. 168*]

In order to maintain adherence to these regulations, it is necessary to choose those who are worthy. For this observance will scarcely endure if those who are less worthy are chosen; because those who are less worthy easily grow lukewarm, and become unworthy, or at least observe the regulations with less diligence, and then, from imperfect observance, a relaxation of the rules will easily and quickly follow, with irreparable damage. For experience demonstrates that, where some abuse has once been introduced into a religious order, it is very difficult to eradicate it afterwards. And this most grievous damage is certainly caused by negligent superiors and by those who choose such superiors. Would that such detriment, derived from this source, were not so frequently lamented in many monasteries! Therefore, I would never dare absolve a religious person who would choose a less worthy superior. And rightly, Salm, in *De Spiritu Sancto*, with Antoninus, extends this doctrine to the election of definitors, counselors, the general procurator, and similar offices. 102. Question 3. Whether the election of a worthy person to a benefice, even if a more worthy person is available, is valid. If the benefice is a simple one, it is certainly valid, according to the common opinion of the Doctors. Salm, number 343. It is doubtful if it is a curacy. Palatius, *loco citato*, page 11, section 3, number 3, and Sanchius, *liber 1*, chapter 1, doubt 6, and Salm, number 345, with Consalvi, Aragona, Hurtado, etc., probably deny it. The reason is that in chapter 18 of the Council of Trent, concerning parochial benefices, after it is prescribed...

[*Latin ed. p. 169*]

To choose those more worthy, it is added: "Provisions or institutions made other than the aforementioned forms are considered to be illicit; and among these forms, (they say), which is more important than that a more worthy person be chosen, as expressly commanded by the Council?" They confirm this from the Bull of St. Pius V. in the year 1566 (in the bullarium, no. 32), where it is declared that no appointments are valid except those made according to the form of Trent, especially in the examination, and furthermore, the right of appeal to a more worthy person is granted.

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103. They assert that the opinion of Lugo, *dist.* 35, no. 71, is more probable, with Garc., Ugolin., Fill., Vasq., Mol., Gutt., Led., and the same is held by Holzm., p. 432, no. 422, with Anacl. and Angel., Croix, *l.* 4, no. 627, with Gonz., Leur., and Lot. The reason is that the form truly signifies only the manner or external rite prescribed by the Council in such appointments, namely, the edict, the concurrence, the examination, etc. But that one person is judged to be more worthy than another by the bishop does not pertain to the form, but to the internal judgment of the bishop, from which the validity of the appointment should not depend; for otherwise, if the bishop chooses one whom he judges to be less worthy, even if that person is truly more worthy, the election will be null. Furthermore, St. Pius in his Bull prescribed that an interposed appeal should not prevent the election made by the ordinary in the first place.

[*Latin ed. p. 170*]

In the meantime, the execution of the mandate shall be ordered, and the provision, while the cause is pending, shall not be removed from the same church. Therefore (as Lugo rightly argues), the election will be valid until the judge of appeals revokes it; otherwise, even without an appeal, the election would not be considered valid. However, all agree that it will be extremely difficult to judge in favor of the appellant in that case, since the greater dignity of the elect does not depend solely on knowledge, but also on other requirements of prudence, integrity, suitability, etc. And therefore, the presumption is always in favor of the election of the ordinary, unless it is proven to be evidently unjust and fraudulent, as Lugo states in *l. c.* and Salm. n. 347, 104, *Quaest. 4.º*. Whether the obligation of choosing the more worthy for benefices, especially for the episcopate, is so urgent that a more worthy bishop should be transferred from one church to another larger one. This question depends entirely on another, namely, whether the translation of bishops is prohibited by divine or human law. Therefore, this must be discussed. The first opinion holds that the translation of bishops is only prohibited by ecclesiastical law, as stated by Leo I in epistle 82, Gelasius in epistle 6, etc. The reason is that otherwise, if it were prohibited by divine law, no reason whatsoever, however useful and honest, would suffice for a dispensation; but in the chapter *Nisi*, concerning the renunciation of the pontificate, the pontiff expressly stated: "As if, for some reason..."

[*Latin ed. p. 171*]

You may persevere in this undertaking, which is both useful and honorable, and I grant you permission. From this, it follows that the Pope can validly dispense in matters of this kind, and even licitly, when there is a sufficient reason. Thus, Suarez defends this in *Suar. t. 3. de relig. l. 1. c. 16*, citing *Hostiensis*, *Major*, and others, as well as *Barb.*, etc., found in *Salm. de benefic. n. 380*. The second opinion, which is more common

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and which I find far more probable, teaches that bishops are bound by divine law to remain in their bishoprics; therefore, the Pope cannot validly or licitly dispense them from this obligation without a very serious reason. This is proven from the chapter "Concerning Temporal Matters, On the Transfer of Bishops," where Innocent III expressly declared that just as God has reserved the dissolution of a carnal marriage to Himself, so too has He reserved the dissolution of the spiritual marriage between a bishop and his church; and He added: "For it is not by human authority, but rather by divine authority, that the spiritual marriage is dissolved when, through a translation..., the authority of the Roman Pontiff (who is clearly the Vicar of Jesus Christ) removes someone from the church." The reason for this natural indissolubility is that otherwise, countless inconveniences would arise: especially because bishops would lack love for their churches, and the churches themselves would be poorly governed, if bishops were frequently changed. Thus, *Vasq. in 3. p. 3. d. 241*, *Caj. 2. 2. qu. 184. art. 6*, and *Sanch. consil. l. 2. c. 1. dub. 3*, with *Salon* and *Sot*.

[*Latin ed. p. 172*]

Furthermore, Ban., Arag., and Salm., number 384, correctly add that it is also forbidden for bishops to abandon their churches, due to the vow they make when they are appointed to the churches, to take care of the flock; this vow is perpetual, and only the Pope can grant a dispensation in it, as taught by St. Thomas [Summa Theologica], 2-2, question 185, article 4, and more clearly in question 185, article 7, where he says: "However, pastors are not bound by a perpetual and solemn vow to the care of souls, as bishops are." Therefore, bishops cannot abandon their office without the authority of the Roman Pontiff.

105. It should be noted here that although the episcopate is compared to a carnal marriage, it is not so true that this spiritual marriage cannot be dissolved by a dispensation from the Pontiff, with a just and very serious reason intervening, as all acknowledge. See Salm., number 328. And thus, it is answered to the text opposed by Suar. The just causes are commonly considered by the Doctors to be, namely, great benefit to the universal or particular Church that cannot be supplied by another, or the necessity of the bishop due to infirmity or lack of resources, or because in his diocese, due to the wickedness of the people or for another serious reason, he cannot properly perform his office. See Salm., number 390, Sanch., book 4, chapter, with Soto and Vasquez. Hence...

[*Latin ed. p. 173*]

In answer to the question, if translation [of a bishop] is forbidden only by ecclesiastical law, according to the first opinion, a lesser reason suffices for the translation, and there is an obligation to choose a bishop more worthy, even from among those who preside over other churches. But if the

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translation is forbidden by divine law, according to our opinion, there will be no obligation to choose a more worthy bishop from among those who actually have care of their own churches; and if a bishop does not wish to be transferred, the Pope cannot compel him to do so, unless a very urgent reason intervenes; in which case, a bishop can even be compelled to transfer to another church, as Sanch. says, *dict. dub.* 3, n. 2; Arag.; and the same is the opinion of Salm., n. 390, with Hurt., *de translatione parochi*, 106, quest. 5, *o*. Whether those who choose a worthy person for a benefice, omitting a more worthy one, are obligated to restore the damage caused to the one harmed or to the church. The first opinion, which is held by Caj., 2.2, q. 62, art. 4; Silv., *v. Restitut.*, 5, q. uli.; Vasq., *de benef.*, 17, dub. 17, n. 117; and Salm., n. 359, with Bann., *Salon*.; Arag., Tapia, and Lop., states that compensation must be paid for the damage caused, when a more worthy person is omitted: because, as they say, just as if some goods were left by the founders, to be distributed to those most deserving, or to the needy, or to relatives, those individuals would have a strict right to those goods; so, the more worthy have a right to the benefices, according to this universal law.

[*Latin ed. p. 174*]

They are instituted not only as stipends for labor, but also as rewards for merit. Others, as Salm. n. 367, with Bann. and Salon., believe that the damage is to be compensated not only to the more deserving, but also to the Church; because this confers upon the elector the right to choose from the Church, so that he may choose the better ones: hence they say that the elector is bound by commutative justice to compensate for the damage that is caused to the Church by the election of a less deserving person.

107. The second opinion, which is no less probable, and which is defended by Nav. in man. c. 17. n. 69., Less. l. 2. c. 34. dub. 15., Sanch. l. 2. c. 1. d. 45. n. 15., Pal. tr. 13. disp. 2. p. 11. §. 4. n. 5., Lugo d. 35. n. 83., Tol. l. 5. c. 4. n. 4., Croix lib. 4. n. 53. and Canus with Adrian, Penna, Cov. etc. apud Salm. n. 354., which they call probable, teaches that the elector owes nothing to either the Church or the more deserving. Not to the more deserving, because then the more deserving would have a strict right to the benefice, when, as we said above, the founders would have had a reason based on merit; but not when it is not primarily so, as in our case: because the benefices are primarily, as all concede, indeed even uniquely, as Lugo holds, instituted for the common good, so that the Church may be served by good ministers: and although secondarily they were also instituted as rewards for merit, from this.

[*Latin ed. p. 175*]

Nevertheless, justice does not grant any rigorous right to those who acquire [property] in such a manner, whether they are deserving or more

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deserving. Nor does the Church understand that electors are obligated by any other pact or law; nor do they intend to obligate themselves with a restitutionary obligation beyond that of choosing worthy ministers. Therefore, neither are the Churches obligated to make restitution, as Pal., Mol., and Sanch. hold in number 10, with Soto and Arag. Conversely, if an unworthy person is chosen, then both the elected person and the elector owe restitution to the Church for the damage caused. Both opinions are highly probable; but I find the second opinion more probable, as we stated in book 1, number 36, and in book 3, number 927, namely, that no legitimate possessor is obligated to make restitution who holds a probable opinion in his own favor.

108. Thus, that other question which we presented in book 3, number 585, is also resolved, namely, whether one who advises a bishop to confer a benefice, whether simple or curatial, upon a worthy person, bypassing a more worthy one, is obligated to make restitution for the damage. Salm. affirms this in this treatise on benefices, number 371, and consequently, according to the opinion he holds, as stated above; but we, consequently, adhering to the second opinion to which we adhered above, say with Layn., Nav., Sa, Less., Val., Fill., and others apud Salm. in the treatise on restitution, chapter 1, number 106, where Salm. himself considers this to be probable.

[*Latin ed. p. 176*]

It is held that he who advises the bishop, without force or fraud, to confer a benefice upon a less worthy individual, is not bound to any restitution. Conversely, if he were to prevent, by force or fraud, the conferral of a benefice upon a more worthy individual, then he is certainly bound to restore the damage caused to that individual, since everyone has the right not to be prevented, by force or fraud, from obtaining a just good, as stated in law 3, number 582. Furthermore, if the benefice were to be conferred through competition, as will be said in the following question. However, it is more probable that he is not bound to restitution who, not by force or fraud, but merely out of hatred, prevents a worthy individual from obtaining a benefice. See the aforementioned law 3, number 584. 109. Question 6. Namely, whether he who, when benefices are conferred through competition, chooses a less worthy individual, omitting a more worthy one, is bound to restore the damage to the latter. The first opinion of the common law affirms this, and is held by Pal. d. p. 11, § 4, n. 6; Tourn. vol. 1, p. 763; Holzm. p. 432, n. 419; Sanch. lib. 2, c. 1, dub. 46, with Mol. and Metin.; Croix l. 4, n. 828; Lugo d. 35, with Nav., Less., Caj., Silvest., Vasq., etc., who call this the truest opinion. The reason is that, by the very fact that a more worthy individual is admitted to the competition, he acquires a right to the thing, since in the common estimation there is then an implicit agreement in the edict between the bishop and the competitors that the

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more worthy should be preferred. This applies in all...

[*Latin ed. p. 177*]

The reward promised to those called to a competition, to an examination, etc. Indeed, Lugo states that when an edict declares that each person's right will be preserved, those who are more deserving acquire a right to the benefit by explicit agreement. All the more so, because in the competition for benefices, the appeal to the more deserving, as given by the Council of Trent, is made; if it is overlooked, therefore, Pal. L. c. states that the more deserving have a strict right to the benefice. However, Ronc. c. 5, q. 2, along with Garc., Lugo n. 21, and Sanch. n. 5, make an exception if the excess of dignity is small. Nevertheless, the second opinion denies the obligation of restitution, as held by Sot. lib. 4. de just. q. 6. art. 3. sub fin., Nav. c. 17. in summ. n. 74, and also Led., Heur. et alii apud Sanch. L. c. n. 1, who consider it probable. The reason for this is that the aforementioned agreement, which is presumed or stated in the edict, is not a strict agreement obligating according to the laws of commutative justice, but rather it is only a promise obligating solely by fidelity; indeed, it is rather an explanation of the obligation that the bishop himself has by distributive justice, which does not obligate to restitution. Undoubtedly, the rewards promised to those competing in an examination, etc., are due, as they say, as stated above; because these are primarily instituted as rewards of merit: but the same does not apply to benefices, which are solely or principally...

[*Latin ed. p. 178*]

They are instituted for the common good. Notwithstanding these considerations, I do not dare to depart from the primary opinion, which is the one commonly held and highly probable. But I also do not dare to declare this second opinion to be improbable; for it truly does not appear that there exists between the bishop and the opponents that agreement which strictly binds them by commutative justice; and since there is no proof of such an agreement, it does not appear that there is any such obligation.

110. Question 7. Whether the one who opposes [the appointment] through the concurrence of a more worthy candidate commits a mortal sin and is obligated to restore the damage to him, if he receives a benefit. There is no doubt that if an unworthy person concurs with a worthy person, he sins by concurring and, by accepting a benefit, is obligated to compensate the Church for the damage and to relinquish that benefit. See Sanch., cons., l. 2, c. 1, dub. 45, n. 9, and Salm., de ben., n. 373.

If, however, a worthy person concurs with a more worthy person, two doubts arise. Doubt 1. Whether this person sins gravely by concurring. The primary opinion denies this; and this opinion is held by Less., l. 2, c. 34, n. 70, Caj., 2.2, q. 185, art. 3, Az., 2, p. lib. 6, c. 15, q. 14, Salm., n. 574, with Soto, Bann., Led., etc., as well as Vasq. and Cov., apud Lugo, d. 35, n. 88.

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The reason is, first, because it does not pertain to him to discuss his own merits, but rather those of the electors; therefore, if he requests the benefit, he does so under the condition that he appears to be more worthy; and second, because this is in accordance with...

[*Latin ed. p. 179*]

To ensure the will of the Church, so that all worthy candidates may participate; otherwise, if it were not permissible for worthy candidates to oppose those more worthy, few would participate, and perhaps those more worthy, fearing scruples, would withdraw, which would certainly be to the great detriment of the Church. The second opinion, held by Sanch. c. 1. dub. 48. n. 4., Pal. dub. 2. p. 11. §. 5. n. 1., Nav. de orat. misc. 48. n. 89. et 97. and Lugo d. 35. n. 91. with Turr., states that if such a grace of honor arises, causing a candidate to advance to a certain stage [in the process], and he then ceases to seek election, he certainly does not sin. Conversely, if he claims election, openly knowing that another is more worthy, he sins. The reason is that, although the bishop does not sin in himself by electing someone based on an excusable error, he does sin in cooperating with such an election, at least materially unjustly; especially because that injustice would weigh against the more worthy candidate who has the right to his own election. Speculatively speaking, this opinion appears more probable; however, in practice, it never seems to be able to occur: for in no case can one who is worthy be certain that the bishop, in good faith electing him, does not have some reasonable motive, hidden from the candidate himself, to exclude another whom he considers more worthy. Lugo himself indicates this in n. 89, Dubium 2. o: Is it the case that a candidate, manifestly knowing that another is more worthy, sins?

[*Latin ed. p. 180*]

When someone accepts a benefit and thereby causes a loss to another, he is obligated to compensate for that loss. The first opinion affirms this, and is held by Nav. l. 2. de rest. c. 2. n. 173, Pal. d. §. 5. n. 1, as well as Silv. et Tann. apud Salm. d. n. 374. The reason is that, by accepting the benefit, he contributes to an unjust choice that causes harm to another.

However, a second opinion, held by Sanch. c. 1. dub. 13. n. 2, Sot. de just. l. 5. q. 6. art. 3, Diana t. 2. tr. 5. misc. r. 110, with Turr. etc., and Salm. l. c., d., states that he neither sins nor is obligated to make restitution. The reason why he does not sin is that, on one hand, as D. Thom. states in 2. 2. q. 185. art. 3, speaking of the acceptance of a position for the episcopacy, the one who is obligated to accept is bound to accept the one who is best suited for the governance of the Church; but concerning the one who is accepted, it is not required that he consider himself better than others, but it is sufficient that he finds nothing in himself that would make the acceptance of the office illicit. On the other hand, he does not sin by cooperating with the sin of

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the one who confers the benefit, because, by the very act of conferring the benefit, the bishop has already committed the sin, and it is an accidental matter whether he accepts or not, as stated in a similar case in l. 3. n. 492. qu. 8., v. Sed admissa. As Sanch. says, "if a father and a stranger are in extreme necessity, the stranger, by accepting bread from the son, does not sin, even though the son sins by giving him the bread."

[*Latin ed. p. 181*]

acceptando: thus, in our case. However, the reason why [the superior] is not obligated to make restitution is because, since the benefit has already been conferred upon [the candidate], the other [candidate], who is more deserving, has no further right to it, since at that point the benefit ceases to be among the common goods. Just as if a thing were sold and delivered to a second buyer, the second buyer is not obligated to return the thing to the first buyer, since, through delivery, he has acquired ownership of it, and the right of the first buyer to the thing has ceased. However, although in our case the term "more deserving" is applied to [one of the candidates], the conferral is nevertheless valid in both instances, and the chosen [candidate] cannot be deprived of the benefit acquired unless a judge's sentence invalidates the conferral, as we said in number 102. And this opinion seems to me more probable; all the more so, because just as the deserving [candidate] can lawfully request the benefit, according to what was said in the preceding doubt, so too he can accept it, since he can never be certain that the conferral was unjust. Hence, Lessius states, probably, in *de non erigendis*, number 70, that if you are certain that the bishop has promoted you not through judgment, but through favoritism, this will not be imputed to you, if the benefit was offered to you without you seeking it, or if you sought it in good faith. It seems that the Church considers such conferrals in favor of candidates to be valid, so that they themselves may not be perpetually troubled by scruples, as is stated in the Council of Trent, Session 7, chapter 3, where it is prescribed...

[*Latin ed. p. 182*]

To confer benefits upon the worthy; otherwise, the conferral is entirely invalid. Therefore, benefits conferred upon the worthy are considered valid from the outset. Furthermore, Sanchez rightly states in the aforementioned passage, number 3, that generally, those being considered are excused from sin, because no one considers himself less worthy, and everyone believes in good faith that, if another excels in one area, he himself excels in another. Question III. 8. concerns whether examiners are obligated to report to the bishop those who are more worthy. The first opinion denies this, as Lugo states in book 35, number 66; Palafox, in the aforementioned passage, section 4, number 9; Croix, book 4, number 626, and Barbatus, Garcia, etc., as cited by Salm, number 338. They prove this from the aforementioned

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passage, chapter 18 of the Council of Trent, session 24, where it is stated: "After the examination has been completed, those who have been judged suitable by age, morals, doctrine, etc., are reported; and from among these, the bishop chooses the one whom he judges to be more suitable than the others." Therefore, they argue, from the words of the Council, it is clear that it is only the duty of the examiners to report those who are suitable, so that the bishop would be acting improperly if he were to choose someone whom they had disapproved of; but, on the contrary, it is solely the duty of the bishop to judge who among them is more worthy. Lugo confirms this from the declaration of the Holy Congregation, which he cites, where it is stated: "The Holy Congregation declared that it is not the duty of the examiners, but only of the bishop, to judge who among those present is more suitable for the vacant parish." And in the Council of Trent, chapter 18, session 24.

[*Latin ed. p. 183*]

It is held that the examiners, after completing the examination, should report to the bishop the number of those whom they have judged to be suitable. This opinion is indeed probable; but a second opinion, which is more commonly held, and which is found in Nav. l. 2. de rest. c. 2. n. 18, Ronc. c. 5. q. 9. r. 1, and Salm. n. 339, with Azor., Led., Med., Vill., Lop., Dian., Tap., etc., seems to me to be more probable. The reason is that the council prescribed the presence of examiners so that the bishop might more easily and safely recognize and choose the more worthy candidate; therefore, although it is not inferred from the words of the council that the examiners are obligated to report the more worthy candidate, it is nevertheless inferred from the intention of the council. Nor does the declaration cited from the Holy See above present an obstacle, because there it is decided only that it pertains to the bishop to judge about the greater dignity of the candidates, and this is certain; but it does not exclude the examiners from being obligated to inform the bishop of whom they themselves consider to be more suitable, so that the intention of the council may be preserved. Finally, it should be noted that the examiners must take an oath of fidelity in their office, as prescribed in the Council of Trent, session 24, chapter 18, concerning reforms: otherwise, there is no valid assembly, as declared by the Sacred Congregation in a decree of December 2, 1628.

[*Latin ed. p. 184*]

ARTICLE THIRD. OF THE INTENTIONS AND QUALIFICATIONS REQUIRED TO RECEIVE A BENEFICE.

112. What quality is required in the one to whom a benefice is conferred?

113. Is the will to become a cleric required? How does one sin who receives a benefice with the intention of subsequently taking a wife?

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114. Does one sin gravely by receiving a benefice with a doubtful intention of receiving the priesthood within a year?

112. *Response.* 1. In order that some benefice may be validly and licitly obtained, it is required that the person be capable and qualified, that is to say, that he be a cleric, not illegitimate (although the bishop can grant a dispensation for the lesser orders and for a simple benefice to which a higher order is not attached), not irregular or excommunicated, not a notorious sinner or a criminal; that he possess the competent knowledge pertaining to the office attached to the benefice, and the legitimate age, unless a dispensation is granted: namely, for a simple benefice, 14 years (although 14 years begun is sufficient, as taught by Diaz, p. 3, tract. 6, r. 64, from Azor and others 5, with Gonzal., Pal., Fill., Barb., and Salm., de benef., cap. unic., n. 160, commonly); for that which requires subdiaconate, 21 years; for that which requires deaconate, 22 years; for

[*Latin ed. p. 185*]

The priesthood, which is begun on the twenty-fourth day (as is probable; Lessius and Azor, apud Salm., n. 157: "That age suffices, if the order is received within the year, according to the Council of Trent, session 24, chapter 12."). Note that, if the age is deficient, even by one hour, the provision of a benefice is invalid; this is the common opinion of Sanchéz, Palafox, Azor, and Salm., n. 162. This is deduced from the Council of Trent, session 22, 23, etc. However, in such cases and similar ones, many are excused, either because that law is not accepted everywhere, or because they have been in possession of the goods in good faith for three years, which, as it were, creates a usucapion and ownership. Lessius, dub. 20, n. 113, n. 2. "He who receives any benefice having the sacred order attached to it is bound to have at least a conditional intention of becoming a cleric and of receiving the sacred order within the time required by law." Layman, chapter 13; Lessius, book 2, chapter 34, distinction 26. The reason is that he who undertakes an office to which an obligation is attached is bound in every way to qualify himself. Indeed, if it is a curacy or parish, and he has the intention of not receiving the priesthood within the year, but of leaving the parish, he not only commits mortal sin, but is also, by law, deprived of the benefice and is bound to restore the fruits, as is evident from chapter "Commissa," § 7, concerning elections, in 6. However, if, with a change of intention, he becomes a priest before the end of the year,

[*Latin ed. p. 186*]

He can retain the fruits [of the benefice]. (Navarre, Lessius, Sanchez, and others, with Salmeron, n. 190, teach the same. And this must be maintained against Soto and Toldeo, as is proven from the aforementioned chapter on "Commissa," where it is stated that the one who receives a curacy with the intention of not accepting the priesthood is obligated to restore the fruits,

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unless, after a change of intention, he is promoted [to a higher office]. See all the words of the cited text, mentioned in n. 114.) Indeed, even the bishop can grant a dispensation, so that, as a substitute vicar, he may devote himself to studies for seven years. "I said 1st, having the sacred order attached: because if he is not attached to it, and the benefice is simple, he may accept it with the intention of profiting from the fruits and then taking a wife, and he would not commit more than a venial sin; if, otherwise, he fulfills his office, as Laym teaches in chapter 17, and Sanchez in book 7, on marriage, district 45. The reason is that this perversion of order does not seem grave, nor is it forbidden by any law, and therefore he is not obligated to restore any of the fruits. Therefore, Garcia, page 3, chapter 4, paragraph 42, excuses such a person from all guilt." "I said 2nd, at least a conditional intention: because, if for a just reason, later on, the clerical state seems less suitable for him, he can change his intention, even if the benefice is a curacy; for example, if the firstborn of the family or the only brother without children dies; if the best marriage is necessary for the preservation..."

[*Latin ed. p. 187*]

To noble families, or when it is necessary to offer something to appease grave disputes, this [benefit] should be offered. The reason is that it is not the intention of the Church to so bind the ecclesiastical state that such things and similar goods are hindered. *Loc. cit.* "Here, the first question is: how does one sin who receives a benefit simply, with the intention afterwards of taking a wife, having relinquished the benefit? It is certainly sinful to commit a grave sin if the benefit has attached to it the sacred order, as commonly taught by Bus. as above, and Sanch. l. 7. de matr. d. 45. n. 14, Pal. tr. 13. dub. 4. p. 7. n. 14, and Salm. tr. 18. c. 200, with Soto, Tol. etc. If, however, it does not have attached to it the sacred order, there are three opinions. The first, held by Less. l. 2. c. 34. n. 132, Tol. l. 5. c. 5, and Salm. n. 199, with Soto and Gutt., says that one still sins mortally; because such an intention is a perversion of the natural and divine order, which establishes that benefits are to be received only for the purpose of serving God. The second opinion, followed by Pal. l. c. and Garc. ap. Bus. supra, holds that one does not even sin lightly; because no precept appears to prohibit this. The third opinion, held by Bus., Sanch. l. c. n. 19, and Laym. l. 4. tr. 2. c. 14. n. 11, with Nav. and Vasq., holds that one is indeed excused from any guilt, when such an intention involves some disorder, but does not sin."

[*Latin ed. p. 188*]

Grave sin, when such disorder is not so great as to deserve condemnation for a mortal sin, because it is not justly established to be grave. However, no precept (as rightly teach St. Antoninus and the Council, whose words we have quoted in book 3, chapter 547, see also below) is to be imposed upon men as grave, unless evident reason suggests it. And from this principle,

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previously handed down by St. Thomas in *Summa Theologica*, question 2, article 15, the aforementioned third opinion appears more probable to me.

114. Question 2: Does one sin gravely and is one obligated to restore the fruits received from a benefice, when accepting the priesthood within a year with a doubtful or conditional intention? The Council, in book 10, page 152, and Soto, *Az. apud Salm.*, number 185, affirm this; because the law requires a true intention of accepting [the priesthood], etc. Thus, it is written in chapter "Commissa, de elect." in 6: "Furthermore, if, not intending to be promoted to the priesthood, you receive a parochial church, so that you may receive fruits from it for a year, and you will relinquish it afterward, unless you are promoted by a change of will, you will be obligated to restore the fruits thereof, because you received them fraudulently." However, Navarrus, Barbatus, Garcia, and Graff deny this, in the same place, number 186; because the text speaks of one who receives a benefice fraudulently; but it does not say that one receives it fraudulently who accepts it with a doubtful or conditional intention. Nevertheless, others are of the opinion, as Bus and Lessius teach in book 2, chapter 34.

[*Latin ed. p. 189*]

13ri et 133., Sanch. d. c. 45. n. 10., Pal. n. 5. et Salm. n. 188. qui citant Lop., Man., Bardi etc., accipientem cum dubio peccare mortaliter et teneri ad fructus perceptos restituendos, quia dubitans revera non habet intentionem; non vero accipientem sub conditione, quia hic veram habet intentionem, quamvis conditionatam. Sed prima sententia est mihi probabilior; quia intentio, ut non sit fraudulenta, debet esse determinata absolute ad ordinem suscipiendum.

ARTICLE FOURTH. WHETHER IT IS LAWFUL TO HOLD MULTIPLE BENEFICES, AND WHICH BENEFICIARIES ARE BOUND TO RESIDE.

115. Whether and when it is lawful to hold multiple benefices. See other matters concerning this in Bus.

116. What kinds of benefices there are. And what are incompatible. And whether, having obtained a second benefice, in any way incompatible, the first is vacated.

117. Whether the holding of multiple benefices is forbidden by divine or positive law.

118. What causes justify the holding of multiple benefices.

119. Concerning the obligation of residence. See what is found in Bus.

120. Which beneficiaries are bound to reside.

121. Question 1. Whether pastors are bound to reside by divine law.

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122. What should be noted concerning the residence of bishops.

[*Latin ed. p. 190*]

123. Concerning the residence of parish priests. Question 1. Do parish priests require written permission [to reside elsewhere]? Question 2. Can parish priests, having a just cause, be absent for two months without permission? What if some necessity arises? What if they are absent for a short time?

124. Question 2. In what place are beneficed clergy obliged to reside? And particularly, where are bishops? And where are parish priests?

125. Question 3. What reasons excuse pastors from residence? And 1. On the grounds of charity. 2. On the grounds of necessity. 3. On the grounds of obedience. 4. On the grounds of utility.

126. Question 4. When and how are non-resident pastors obliged to restore the fruits of their benefices?

127. Question 1. What if they are absent with a just cause, but without permission? Question 2. What if their absence is without fault? Question 3. What if they reside uselessly? And are parish priests obliged to personally perform their principal duties? Question 4. Are non-residents obliged to restore the full fruits [of the benefice]?

128. To whom must the fruits be restored by non-residents?

129. More here concerning the residence of canons.

130. What reasons excuse canons from assisting at the choir? And 1. On the grounds of infirmity. Question 1. Are those who are seventy years old excused by themselves? Question 2. Are the blind and the deaf? 2. On the grounds of necessity. What if someone is absent from the choir because he has incurred excommunication? What if the church is interdicted? What if it is polluted? Do irregular canons lose distributions and the fruits of their prebends? 3. On the grounds of utility.

131. What about the canonical penitentiary? What about the theologian, the examiners, the visitors, etc.?

[*Latin ed. p. 191*]

132. What concerning those who teach in canonical institutions? Do parish priests who are teachers enjoy the same privilege? What concerning canonical and parish students? 115. ”R ESP. To possess multiple benefices is not simply an intrinsically evil or entirely indifferent matter, but rather it bears the appearance of evil, and is ordinarily illicit and contrary to natural law (if such is the case, when one would suffice for honest sustenance), unless a just cause arising from the circumstances mitigates it. Thus teaches Laym. l. 4. t. 2. c. 8. n. 1, citing from St. Thomas, Lessius, Azor, etc., in their commentaries. For, as the Council of Trent teaches in Session 24, such plurality involves great disorder, since the divine worship is

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diminished, the church is deprived of its workers, and the poor, whom pious founders intended to support, are left without assistance. Hence, benefices are distinguished into incompatible ones of the first kind, in which, upon peaceful acceptance of a second, the first is vacated; such as are multiple benefices with cures, as well as multiple dignities, prebends, and two uniform benefices under the same roof; and into incompatible ones of the second kind, which, although they cannot be obtained without dispensation, do not, however, become vacated upon the attainment of the first: such as are other benefices that require residence, for example, two canonries in different churches, in which the constitution of the Council of Trent, Session 14, chapter 12, concerning reform, is received, namely that..."

[*Latin ed. p. 192*]

It is permissible to be absent from the church for more than three months. Hence, Laym. c. 8, n. 6, teaches that a canonry in a cathedral church of Germany, which, by an ancient custom, requires only a residence of half a year, or three months, is to be considered among compatible benefices. (See n. seq. v. Notandum). "I said: unless there is a just cause; for he who has obtained more benefices by dispensation, unless there is a just cause, will not be safe in his conscience, but will be obliged to relinquish one, as Less. n. 124 teaches." Furthermore, a just cause for dispensation will be an evident necessity and utility for the church, and sometimes also the prerogatives and merits of the person, e.g., distinguished nobility, dignity, knowledge, authority, virtue, etc.; provided that care be taken that the accumulation of benefices, even if it is due to the person's prerogatives, be referred only to private advantage and not to the common good. Indeed, without dispensation, more benefices can be held in the following cases: 1st, if both are so meager that neither is sufficient for sustenance; provided that both are simple and do not require residence. (Otherwise, if the benefices require residence, even if they are meager; Croix, l. 4, n. 918, with common opinion). 2nd, when a parish is annexed to a canonry and is accessory to it; then both.

[*Latin ed. p. 193*]

"In such a manner is it held, so that a perpetual vicar may be maintained in the church."

3. When benefices are legitimately united.

4. When another suitable and worthy person is not found.

5. When one benefice is held in title, and another in commendam, not perpetually, but for a few months until a suitable person is provided. Thus, Reginald of Silv. § 116.

Some benefices are simple, such as those which are instituted only for offering prayers to God and for serving at the altar, namely, canonries, chap-

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laincies erected by pontifical or episcopal authority, testimonials given to clerics for pursuing their studies, and the like.

Other benefices are complex, that is, those which have some jurisdiction, preeminence, or administration, such as dignities, etc., as will be explained below.

Furthermore, some benefices are compatible, and others are incompatible. And among the latter, some are incompatible of the first kind, such as benefices that are curates, or those that are uniform under the same roof, namely, those which pertain to the same functions in the same place and time; also, dignities, personates, and offices.

Dignities are those to which some jurisdiction is attached over the clergy or the people; such as bishoprics, abbeys, deanships, prebends, archpresbyterates, and archdeaconates. Personates, however, are those which...

[*Latin ed. p. 194*]

They possess a certain preeminence over the clergy, but without jurisdiction, such as are the offices of the first priest, the choirmaster or singer, and the principal sacristan. The offices are those of the treasurer, the prefect, the caretaker, or the lower sacristan, the economist, etc.; some of which have attached to them a certain administration, but without jurisdiction or preeminence. Others are incompatible of the second kind, such as canonries and all those that require residence. It must be noted that if anyone obtains two incompatible benefices, upon obtaining the second, he is automatically deprived of the first, and if he presumes to retain both, he is likewise automatically deprived of both benefices. These things are certain concerning incompatible benefices of the first kind, from the Council of Trent, Session 7, chapter 2, and Session 24, chapter 17, as well as from the chapter "De multa, de præb., extrav.," "Execrabilis, de præb. et dign.," chapter "Litteras, de concess. præb.," and Clementine, *fin.* in the same title. But it is doubtful whether the same applies to incompatible benefices of the second kind, namely, whether, upon obtaining the second, the first is automatically vacated. The authors Contin, Sporerius, *in fine tomi 3. de statu clericor.*, page 76, note 48, to note 9, Salm, *tr. 28. de benef.*, note 664, with Gonz., Az., and Garc., and Fagnan, *in cap. De multa, de præb.*, from the declaration of the Sacred Congregation, therefore say that it is proven from the aforementioned passages of the Council of Trent. But it is denied...

[*Latin ed. p. 195*]

As stated above, section preceding, number 115, and Holzmüller, volume 1, page 451, number 415, with others: and Navarrus, volume 1, section 3, council 24, concerning preferment, states that if the Sacred Congregation had declared that the Council of Trent should be understood in such a way, such a declaration would have been confirmed by the Pope, and then it would be held to be so; but because this is not the case, and because from

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other words of the council it does not seem to be effectively proven, it is not something that binds us to the first opinion. Indeed, the council in the aforementioned place, namely session 7, chapter 4, speaks of those who presume to retain two benefices, whatever their incompatibility, namely, those that require residence, and it says that they are deprived by law of both benefices; but it does not say a word about the vacation of the first on account of the acquisition of the second. In the latter place, namely session 24, chapter 17, where it prescribes that the first benefice is vacated upon the acquisition of the second, it speaks only of curacies, namely, episcopal and parochial benefices. Nevertheless, despite this, because the aforementioned declaration of the Sacred Congregation is cited by many, and especially by Fagnanus, who was a diligent investigator of such declarations, it pleases us rather to adhere to the first opinion, but we do not disapprove of the second. Laymannus notes in his book 4, volume 2, chapter 8, number 4, at the end, that having a personal cure in a church, one can also legitimately have a canonry there.

[*Latin ed. p. 196*]

The parochial church is annexed and must be administered by a vicar, as stated in chapter "Concerning the Same," paragraph 6. Furthermore, it should be noted, as Salm. n. 666 and Abelly, in his "Appendix on the Status of Clergy," page 448, n. 2, state, that in some case of evident necessity or utility to the Church, the Pope might grant a dispensation, allowing someone to hold multiple incompatible benefices, even curacies, as Gregory the Great is said to have done when he appointed Martin, Paulinus, and others to two bishoprics. This is evident from the Council of Trent, Session 7, chapter 5. We spoke of a case of evident necessity or utility; for otherwise, someone holding multiple such benefices, even with a papal dispensation, would not be safe in conscience, as rightly stated by Salm. in the aforementioned passage, along with Bellarmine, Panormo, Wigand, and Polanus, 117. Here, a significant question arises: whether the plurality of benefices is prohibited not only by canonical law, but also by natural law. The first opinion denies this, as stated by Innocent in chapter "Concerning Clerics Who Do Not Reside," n. 1, and in chapter "Concerning Prebends," n. 2, as well as by Fillon, Lugo apud Salm. on benefices, n. 656, and Valois, Ledanois, Tusch, Rebuffet, etc., apud Croix, book 4, n. 962. Because, as they say, if this were contrary to natural law, the Pope would not so frequently grant dispensations in this matter of plurality, as we see is the custom. The second opinion, held by Tournhem, book 3, page 774, article 2, and Azorín,

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Pan. and Host. in Salm. n. 655, absolutely affirms the benefits, both double and simple. The reason is, firstly, because one person cannot adequately serve two churches, and secondly, because the intention of the founders

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is that there should be more people serving the churches; and therefore, they state that the plurality of benefices was expressly condemned by the Council of Trent, session 24, chapter 27, on reform, where it was decreed: "When the ecclesiastical order is perverted when one person occupies the offices of many, the holy canons have provided a safeguard, that no one should be assigned to two churches." However, since many, deceived by improper desires, not God, do not hesitate to subvert what is well established by various means, and to obtain multiple benefices simultaneously, the holy synod, desiring to restore the discipline necessary for the proper governance of churches, by the present decree, which it commands to be observed by all persons, whatever their title, even if they bear the honor of the cardinalate, has decreed that in the future, only one ecclesiastical benefice shall be conferred upon each person. And if this is not sufficient to honestly sustain the life of the person to whom it is conferred, it is nevertheless permissible to confer another simple benefice, provided that both do not require personal residence, upon the same person. And this applies not only to cathedral churches, but also to all other benefices, both secular and regular.

[*Latin ed. p. 198*]

Whatever regular positions, even those that have been approved, pertain, of whatever title and quality they may be. The third opinion, which is common and to be held (although formerly I considered the first to be probable), teaches that a plurality of benefices, whether plural or simple, is permissible, provided that one is sufficient for a suitable livelihood; but such a situation is contrary to natural law for reasons which will soon be given, and other inconveniences which arise from the plurality of benefices, as enumerated by John XXII in *Extravagantes*, concerning prebends and dignities; so that, even with the dispensation of the Pope, several benefices cannot be held without mortal sin, unless certain circumstances mitigate the situation. Thus, St. Thomas, *Summa Theologica*, 2nd part, question 15, article 1, whom Lessius follows in *lib. 2, cap. 34, no. 137*; Layman in *lib. 4, tract. 2, cap. 8, no. 2*; Palearius in *tract. 13, disp. 6, p. 4, no. 26*; Azorín in *2, p. l. 6, cap. 12, q. 7*; Abelly in *Appendix de statu clericorum, a. 3, q. 4, no. 4*; Holzmüller in *t. 1, p. 431, no. 417*; Salm in *no. 658* and *no. 669*, where they state that our opinion is held with others; also Bellarmine (in Tournhem), who says that the dispensation of the Pope does not make anyone safe unless there is a most urgent cause and a necessity for the Church.

118. The causes which mitigate the plurality of benefices, according to the common opinion of the Doctors, are: 1. The necessity of the Church,

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namely,

[*Latin ed. p. 199*]

If other suitable ministers are lacking; thus, the Council, volume 10, page 171, paragraph 7; the Anaclasius, page 417, paragraph 16; and Salmeron, paragraph 661, and others, from the Doctors of the Church, who teach as cited in article 15. Then, it is possible to confer multiple benefices upon one person, if there is a necessity in several churches under his jurisdiction, and if he himself can serve the Church more, even while absent, than another present, these are the words of the Saintly Doctor.

2. The utility of the Church, namely, if one person alone, even while absent, is considered more likely to benefit the Church through his authority, doctrine, and prudence, than another through his presence. Thus, Holzmüller, volume 1, page 431, paragraph 418; the Council, in the same place; and the Anaclasius, paragraph 17, with Pirhing. From this, Holzmüller and the Anaclasius state that, for this reason, sometimes multiple bishoprics are conferred upon the sons of princes, even before they reach the age of majority, so that the Churches may be more powerfully defended against heretics.

3. The evident prerogative of merit, namely, if someone has distinguished himself through teaching, counsel, instruction, or writing. Thus, Laymann, book 4, treatise 2, chapter 3, paragraph 2; the Anaclasius, in the same place, paragraph 18; and Holzmüller, in the aforementioned paragraph 418, from chapter "De multa," §, at the end, concerning prebends, where it is said: "No one should presume to hold multiple dignities or benefices, even if they do not have the care of souls; however, concerning sublime and learned individuals who are worthy of greater benefices, if reason requires it, a dispensation may be granted by the Apostolic See." And this is in accordance with the teaching of the Apostle, 1 Timothy 5, where he says: "The presbyters who rule well are worthy of double honor, especially they who labor in the word and doctrine."

[*Latin ed. p. 200*]

They ought to be held worthy of double honor (that is, the bestowal of benefices, as St. Hieron explains in chapter 15 of Matthew); especially those who labor in the word and doctrine.

Concerning simple benefices, whether, if someone already possesses one benefice which is sufficient for his proper support, he may lawfully accept a second without just cause, the first benefice itself being thereby vacated. Holzmüller denies this in volume 1, page 431, number 415, as do Gonzalvo and Flaminio, cited by Salm, number 66g, stating that he is not thereby deprived of the benefice, but rather it must be enforced by the judgment of a judge that he relinquish the second. However, Barbieri, in *De Potestate Episcopi*, allocation 62, number 3, Fagnani, in *Cap. De

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Multa, De Praeb.*, and Salm, number 66g, with Garcia, citing a certain declaration of the Sacred Congregation, maintain that this is the more fitting and common opinion, as it appears more in conformity with the words, or at least the spirit, of the Council of Trent, Session 119: "Whether and how are clerics bound to residence?" Response 1st: Bishops, parish priests, and those who hold a curatial benefice are, by divine law, bound to residence. It is not sufficient if they administer through others, unless a greater good demands it: for it is contrary to reason that one should have the office and the fruits, while the other bears the burden. *Bonifacius, Tractatus 1, d. 5, De Obligatione Beneficiorum, p. 1.* Response 2nd: Thus are bishops, within a year, and beyond three years, and parish priests...

[*Latin ed. p. 201*]

Those who, without a legitimate cause known to and approved by the bishop, are absent for more than two months, sin mortally and do not fulfill their duties. Thus, Council of Trent, Session 23, on Reform, chapter 1. Note that Dionysius, page 9, volume 7, reply 53, from the aforementioned Bartholomew, also applies this to superiors or regular prelates; therefore, they are obligated to assist even during times of plague, even at the risk of their own lives.

Reply 3: Those who hold dignities, canonries, prebends, or portions in cathedral or collegiate churches, (also all those who have a perpetual benefice with attached service in the choir, as stated by Salm, treatise 28, number 142, from the declaration of the Holy See, against Azorius, who excuses them if others are serving the church), if they are absent for more than three months within a year, in the first year they are deprived of half of the fruits, and in the second year of all the fruits they have earned that year. However, this penalty is not to be imposed without due process: as is clear from the Council of Trent, Session 25, chapter 10.

Reply 4: The causes that excuse absence from residence are: 1. The study of theology or canon law; for this, neither the permission of the prelate nor the bishop is required; but permission is required for the study of the humanities and philosophy, unless custom dictates otherwise. 2. The study of theology or canon law; for this, it is permitted for five years...

[*Latin ed. p. 202*]

1. Even the years of absence are excused.

2. Obedience to the Pope or bishop, for the benefit of the Church.

3. Legitimate license, for any other just cause.

4. Honorable custom, where the decree of the council is not accepted.

*V. Bon. l. c. "Response 5: He who is absent without a just cause sins mortally, but is not bound to make restitution of the fruits, if he has fulfilled his office, unless he is condemned to do so, or unless it is expressly stipulated by law."

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*Response 6: Those who are absent for a legitimate reason do not lose the distributions, according to the Council of Trent; unless, however, they are absent to attend to ecclesiastical affairs, by order of the chapter, or entirely involuntarily due to illness, captivity, unjust excommunication, etc.

*V. Less. l. 2. c. 34. dub. 29.

3. Many things here are necessary for knowledge and practice concerning the matter of residence, by which term is understood the dwelling in the place of the benefice in order to personally perform ecclesiastical duties. Therefore, Silv. rightly infers that those who reside in the place of the benefice, but do not perform the due offices, are not considered to reside, as is explained more fully below. It should also be known that formerly, according to common law, all simple benefices required residence, as is evident from cap. Clericus, dist. 91, etc., part 8, concerning clerics who do not reside. But today, according to the general law of the entire Church,

[*Latin ed. p. 203*]

The very nature of such institutions does not necessarily require a physical residence, as it suffices for the service to be provided by a vicar, unless the founders have expressly stipulated otherwise. Thus, it is commonly held (Contin. Tourn. t. 3, p. 29; Holzm. de præc. partic. p. 433, n. 425; Barb. in Trid. sess. 24, c. 17, n. 18, with Sanch., Azor., Reg. et Spor. t. 3, de statu cleric. p. 73, n. 22), that only those who are explicitly bound by such a requirement are obligated to reside there. Today, all pastors who have care of souls, and all canons or prebendaries of cathedrals or collegiate churches, are obligated to reside there; of which we shall speak more fully later.

121. Question 1: Whether all those who have care of souls are, by divine law, obligated to reside there. Some, such as Ambr. Catharinus, Valerius, etc., as cited by Salm. tr. 28, de benef. n. 91, maintain that they are only obligated by positive law. However, it is certainly to be held that they are obligated by divine law, as commonly taught by Less. lib. 2, c. 34, n. 153; Tourn. t. 3, p. 29; Petroc. t. 4, p. 503; Anacl. de benef. p. 414, n. 68; Ronc. eod. tit. c. 2, q. 3, r. 2; Spor. l. c. p. 73, n. 23, with Nav., Fagn., Garc., Barb. and Salm. l. c. n. 94, and many others. And this is proven from the Council of Trent, Session 23, c. 1, de ref., where, although it was not expressly defined, it was implicitly assumed in these words: "Since it has been commanded by divine precept to all those to whom the care of souls has been entrusted..."

[*Latin ed. p. 204*]

The care entrusted to them is to recognize their sheep, to offer sacrifice for them, and to exercise paternal care for the poor and other miserable persons through the divine preaching, the administration of the sacraments, and the example of all good works, and to undertake all other pastoral duties; and all these things cannot possibly be accomplished by those who do not watch over or assist their flock, but rather abandon it in the manner

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of mercenaries, etc. The Holy Synod declares that all those in charge of cathedral churches, even if they are Cardinals of the Holy Roman Church, are obligated to reside personally in their church or diocese, where they must fulfill the office assigned to them, etc. Therefore, just as it is by divine law that pastors should recognize and care for their sheep by example, so too it is also by divine law that they should reside where their sheep are; otherwise, these things cannot possibly be accomplished by those who do not watch over or assist their flock, but rather abandon it in the manner of mercenaries. And this was clearly declared by Benedict XIV in his bull: *Ubi primum*, § 4, published on December 3, 1740 (cf. in *bullar.*, vol. 1, p. 4). For after stating there that pastors are bound by divine law to assist their sheep, so that they may feed them with the word and by example, he immediately adds: "Therefore, it is necessary that you remain in your place and maintain personal residence in your church or diocese; by virtue of the power of your office."

[*Latin ed. p. 205*]

(Note) You are obligated. Hence, Tourn rightly states, page 31, and Croix, book 4, number 865, that the Pope cannot dispense in this matter, but can, in certain cases, declare that divine law does not obligate, given just reasons, concerning which see below, number 125. 122. Furthermore, it should be noted that the aforementioned Council, in chapter 1, granted bishops the right to be absent from their churches for two or three months, with these words: "Since those who are absent for only a short time do not appear to be absent, according to the opinion of the ancient canons, because they will return immediately; the most holy Synod desires that the period of absence, for each year, whether continuous or interrupted, outside of the aforementioned reasons, should not exceed two or, at most, three months." Therefore, Ronc., chapter 2, question 3, response 2, Elb., page 526, number 360, and Anacl., page 415, number 73, with Barb., Sot., and others, believe that even the reasons of relaxing the mind, or visiting relatives or friends, are sufficient for excusing such an absence. However, Pal., book 5, page 4, number 1, Vasq., *opera de beneficiis*, chapter 4, section 2, number 147, and Mazz., volume 2, page 441, number 2, with others, say that these reasons are not sufficient unless perhaps for a month, which is truly quite sufficient for relaxing the mind; while, conversely, the Council remits the judgment concerning the sufficiency of a just cause (that is, a cause proportionate to such an absence) to the consciences of the bishops.

[*Latin ed. p. 206*]

And he diligently warns lest they expose themselves to the danger of ruin through this, for thus, in the same chapter 1 of the Council of Trent, immediately after the words mentioned above, it is added: "And it is to be so arranged that this may occur for some reason and without any detriment

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to the flock; whether this is so, it is left to the conscience of those who are absent, which he hopes will be religious and devout; for with God, their hearts are open, and they are held by their own peril to act honestly in His work." It should be noted that the Council, there, warns bishops not to be absent from their cathedral churches during the seasons of Advent, Lent, the Nativity and Resurrection of the Lord, as well as Pentecost and the Feast of Corpus Christi. Whether the reasons mentioned above are sufficient to excuse the absence of bishops for the three months granted by the Council, or whether greater reasons are required; consider what our Most Holy Father Benedict XIV said on this point in two places. For in one place, he seems to require an absolutely grave reason to excuse [absence]; in the other, he only excludes frivolous reasons. Indeed, the words of the Pope in the bull which begins *Grave*, published on August 21, 1741 (in the collection of bulls, volume 1, page 63), writing to the Irish bishops and lamenting that some of them resided in their dioceses for scarcely a month, then says: "Bishops, indeed, never fully fulfill their duty of residence who are absent from them, or are substituted by another, or by a vicar."

[*Latin ed. p. 207*]

The Church is governed, unless perhaps for a short time and for a serious reason this should occur. In another bull, which begins with "Ad universæ," issued on September 3, 1746 (in the collection of bulls, volume 2, page 28), declaring what reason is required by the Council of Trent for a quarterly absence of bishops, it says: "Levity of spirit, the desire for pleasures, and other similar causes are excluded." Furthermore, concerning this residence of bishops, several other things must be noted here, which are found in the bull "Ad universæ" mentioned above. In it, first of all, the decrees concerning this matter, issued by Pius IV, Gregory XIII, and Clement VIII, are confirmed and commanded to be observed in virtue of holy obedience; and especially, the decrees of Urban VIII are renewed, where it was prescribed: 1. that bishops can remain in Rome for one month in the Roman Curia (which, however, can be extended by another 40 days by the vicarius pontificis, with the permission of Benedict XIII); 2. that bishops, when approaching the threshold of the Apostles, according to the established times, can be absent for four months, and for seven months, if their churches are located beyond the sea or mountains; 3. that if bishops are required to be present in provincial councils or in ecclesiastical congregations, or in public offices that are attached to their bishoprics, they can be absent for the time necessary for those duties; 4. that bishops cannot...

[*Latin ed. p. 208*]

The quarter of a year's absence granted from Trident [the Tridentine Council] is to be joined with the time during which they ought to reside,

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or with the time granted to them for visiting the sacred places, or with the time during which, due to unhealthy air, they are permitted to reside outside their diocese; nor can a quarter of a year from one year be joined with a quarter of a year from the following year. Furthermore, the same Benedict XIV, in the aforementioned bull, renews the penalties imposed on non-resident bishops by the Sixth Session, Chapter 1, and the Twenty-Third Session, Chapter 1, of the Council of Trent. Also, he renews the penalty of the loss of the faculty of witnessing and administering, if any such faculty pertains to those who have transgressed, imposed by Pius IV, as well as the penalty of being deemed ineligible for higher offices and benefices, imposed by Clement VIII; to which he adds the deprivation of all privileges that have been granted to those who have transgressed, as those who are assisting the pontifical throne. Moreover, he declares who are included by the term "transgressors," with these words: "Declaring that those who, besides the three months tolerated by the Council, without a legitimate cause and the express permission of the Roman Pontiff, reside outside their own dioceses, are not the only ones included under the name of transgressors, but also those who have not hesitated to fraudulently obtain such permission through false and simulated reasons, or, having once rightly and properly obtained it, have not observed the prescribed regulations."

[*Latin ed. p. 209*]

Those who have transgressed the established limits and the predetermined time. V. Other matters which are established in this bull. 123. It must be noted that, equally, parish priests who do not reside are not excused from grave sin and from the restitution of fruits, as the same Council declared in session 23, chapter 1. And these are obligated to reside, however small the benefice may be, as Salm. teaches, tract. 28, n. 109, with Barb. and Reg. from chapter *Conquerente, de cler. non resid.* Furthermore, the same Council, in the aforementioned passage, declares that parish priests cannot depart from their churches for more than two months, unless for a serious reason and with written permission from the bishop, nor for less than two months, unless the bishop himself or his designated vicar approves the reason. The words of the Council: "Concerning curates of lower rank, the most holy Synodus declares and decrees in the same way, namely, that whenever they are absent, for a reason previously known and approved by the bishop, a suitable vicar shall be left behind, approved by the ordinary himself, with a proper assignment of salary. However, permission to depart, in writing and without charge, for more than two months, shall not be granted, unless for a serious reason." Here, a doubt arises: 1.º Whether the aforementioned

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written permission is absolutely required, so that...

[*Latin ed. p. 210*]

It is efficacious if it is held orally. Lessius denies this in *Liber Secundus*, chapter 34, paragraph 158, and others, as cited by Bonaventure in *De Beneficiis*, book 5, page 5, paragraph 17, stating that the script is required only for the external forum, and not for the validity of the concession itself. However, Sanctus in *Decretalium*, book 6, chapter 16, paragraph 31, Palatinus in *Tractatus*, book 13, book 5, page 5, paragraph 8, and Navarrius, as cited by Bonaventure in the aforementioned place, affirm that, even if the script is not necessary for the validity of the concession according to natural law, it is nevertheless necessary when permission in writing is explicitly required by the Council of Trent. But since this is not the case, I do not consider the opinion of Lessius to be improbable, an opinion also held by Viva in *Opuscula*, book 3, question 3, article 3, paragraph 7, *in fine*, and considered probable by Croix in *Liber Tertius*, page 1, paragraph 739. Indeed, Concinius and Regius, in the same place, say that tacit permission is sufficient, at least if such signs are present that it is clear that the bishop actively consents. Mazzola, in volume 2, page 412, states that even presumed permission is sufficient; but Croix, in the aforementioned place, states that this presumed or interpretative permission is not admitted by anyone. See the aforementioned paragraph 18. See Second Question. Indeed, the Sacred Congregation (as noted by Paulus Zacharias, as cited by Croix, paragraph 739) declared that such permission must be explicit.

Second Question: Can a parish priest, having a just cause for leaving, be absent for those two months without the bishop's permission? The first opinion affirms this, and it is held by Navarrius in *Manual*, chapter 25, paragraph 121, and Cabassus in *Tractatus Juris Canonici*, book 5, chapter 1, paragraph 4.

[*Latin ed. p. 211*]

Furthermore, Bona, Rodriguez, Lopes, and others, in Salm. n. 117, consider it probable; and Lessius, in *liber* 2, chapter 34, n. 159, Croix, in *liber* 3, page 1, n. 142, Azorín, in page 2, *liber* 7, chapter 4, question 10, and Palafox, in *tractatus* 13, division 5, n. 3, along with Sa, Zerolo, and others, hold a similar view. The reason is that, as they say, this had already been permitted before the Council, as is evident from chapter 1 of the *Praesentes*, where a priest who, due to illness, had been absent from his church for two months, beyond the time prescribed by the bishop, and who had therefore been removed by his bishop, is commanded by the pontiff to be restored to his place. However, any honest reason suffices for an absence of two months, as is evident from the words of the Council, as mentioned above; therefore, the license and approval of the bishop are not required for such an absence, but only for an absence exceeding two

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months, for which the bishop must approve the gravity of the reason.

However, the second opinion, which we follow, denies this, and Barbieri, in *de potestate episcopi*, allegation 53, n. 96, Elbing, in *tomus* 2, page 527, n. 362, who call the opposite view scarcely probable, Roncaglia, in *de beneficiis*, chapter 2, question 4, response 2, Holzmüller, in *tomus* 1, page 433, n. 428, and Salm, in the aforementioned place, along with Vasquez, Garcia, Goméz, Fillol, and others, hold this view, based on a certain declaration of St. [presumably a reference to a papal bull or decree]. The reason is that, although the Council does not require a serious reason for leaving for two months, it absolutely requires that the reason be acknowledged and approved by the bishop, from these very words: "quandocunque eos..."

[*Latin ed. p. 212*]

It may happen that a parish priest is absent, the cause of which must first be known and approved by the bishop. This is especially so because the parish priest is prohibited by the Council from leaving, unless a substitute is first approved by the bishop who will remain in his place. However, Anacl. p. 416, n. 77, states that this custom must be observed in the diocese; and whether this rigor is commonly received, Less. d. n. 159, asks. I believe, however, that it is not commonly received. But if the bishop has already approved the cause and the substitute, no other permission is required to leave, as is clear from the words of the Council mentioned above, n. 123. Furthermore, a parish priest may lawfully be absent for a short time without permission, if some necessity arises which does not allow time to consult with the bishop; provided that he leaves a suitable substitute, as rightly say Spor. t. 3. p. 74. n. 30., Elb. p. 534. n. 379, with common opinion, and Anacl. p. 416. n. 78, who holds this to be certain; and the Sacred Congregation of Councils has approved it, as noted by P. Zachar. ap. Croix l. 3. p. 1. ad n. 740. He must, however, inform the bishop of his absence and the reason for it, so that the bishop may be aware of the cause and grant permission, at least afterwards, unless he returns shortly. Elb. with Garc., Spor. ll. cc. with Fag., Abb., Anacl. etc. Furthermore, due to the smallness of the matter, a parish priest may be excused, at least from mortal sin, if he is absent for a short time, as commonly say the Doctors of the Church, provided that he does not leave the sick in articulo mortis.

[*Latin ed. p. 213*]

Concerning absence. As to how brief this period should be, the Holy Council, as reported by Salm. n. 113, in Garc., declared: a parish priest cannot be absent without permission for more than a week, even if a suitable vicar, approved by the ordinary, is left in his place. However, Holzm. p. 433. n. 427., Ronc. q. 3. r. 2., and Spor. n. 31. p. 74., along with Pal., Barb., and Anacl., commonly admit that a parish priest does not commit a grave

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sin if he is absent without permission for six or seven days, provided that a suitable vicar is left in his place. Indeed, Tourn. p. 34. n. 5., Cabass. l. 5. c. i. n. 4., Sanch. de matr. l. 7. d. 71. n. 11., and Reg., Valer. apud Salm. n. 113, extend this period up to 15 or 20 days. However, by a Roman synod under Benedict XIII, tit. 15. c. 6, it was forbidden for parish priests to leave their charge for more than two days without written permission from the bishop or the general vicar: but it has been affirmed to me by some upright men that this synod was not received in our kingdom. Furthermore, I do not agree with the opinion held by La-Croix l. 3. p. 1. n. 741, who states that a parish priest does not commit a grave sin if he is absent for two months without permission, but with a reason and without serious harm to the flock: because, as he says, this is not inherently evil; otherwise, the Council would never have admitted absence for two months, even with prior permission; and that permission is not requested in that case, is considered.

[*Latin ed. p. 214*]

It is not a grave matter. Indeed, Navarrus, Garcias, Bonaventure, Barbatus, and others, cited ibid., excuse the parish priest from mortal sin, even if he is absent without cause; because such an absence is considered, in itself, to be a minor fault. Therefore, Navarrus, Azorius, Castropus, Bonaventure, and others, apud Croix, n. 745, state that in such a case, restitution of the fruits [of the benefice] is not required. However, whatever may be the case regarding these matters, the bishop can certainly prohibit the parish priests from leaving their churches altogether; although he cannot bind them with excommunication, nor can they be absent for even two days, as say Salm, n. 103; Roncone, q. 4, r. 2; Bonaventure, d. 5, p. 3, n. 8; and the decree of the Holy See, apud Garcias and Barbatus, 124, Quær. 2, concerning the obligation of beneficiaries to reside. The Pope is bound to reside in Rome, as are also the cardinals; thus, Roncone, de benef., c. 2, q. 3, r. 2, and Salm, tr. 28, n. 97. However, some say that bishops are bound to reside in their cathedral, and that it is not sufficient if they reside only within the diocese, as say Salm, n. 98; Fagnanus, in c. 34, de cler. non resid.; Roncone, loc. cit., with Barbatus and Spotorius, p. 73, n. 25, from c. Placuit ut nemini, q. 1, where it was so established by the Council of Carthage, c. 5: "It was decreed that no one should have the power, having left the principal cathedral, to transfer himself to any church within the diocese, or to neglect the proper care or frequentation of his own cathedral for a longer time than is proper, or to remain in a particular place." If, however...

[*Latin ed. p. 215*]

The bishop may have two cathedrals, and he may reside wherever he wishes, as stated in Psalm 109, according to the bull of Urban VIII. However, others, as Holzmüller states in volume 1, page 433, number 426, and Cabassol in volume 3, book 5, chapter 1, number 2, to which Bona also adheres

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in volume 1, division 5, page 3, number 5, maintain that the bishop may reside in any place within his diocese; and this seems not to be doubtful, since in the Council of Trent it is expressly stated that bishops are obligated to maintain a personal residence in their church or diocese. The same was declared by the Holy Pontiff in the bull that begins with "Ubi primum," issued on December 3, 1740, paragraph 4, stating: "You shall maintain a personal residence in your church or diocese." Parish priests, however, ought to reside in the house of their church, if one is present there; but if there is no such house, they ought to reside in another house that is within the limits of the parish, at least morally, that is, one that is so close to the parish church that it can conveniently serve the priest; and so that the parishioners may easily have recourse to him for the reception of the sacraments, as Palearius states in volume 13, division 5, page 2, number 1, Bona in "De Beneficiis," division 5, page 5, number 4, and Salm in volume 28, number 110, with Navarret, Bardinet, Hurtado, and Garcia. Therefore, Bona and Salm rightly state that a parish priest who resides far from his church, for three or four miles, cannot be considered to be residing; indeed, even for two miles, as Croix reasonably believes in volume 3, page 2, number 745. Furthermore, he adds there that...

[*Latin ed. p. 216*]

Lucca, Leiria, and Lot, etc., are not sufficient reasons for a priest to reside elsewhere, even if he lives within the boundaries of the parish, if the flock cannot easily access him. However, a priest who holds two parishes, neither of which is more important or frequented, or which exists in a city, may reside in whichever he chooses: as Salmeron states, citing Navarret, Palafox, Hurtado, and Bardesano, who report that these matters were decided based on various declarations of the Sacred Congregation, specifically *Quaestionum Disputationum* 3rd question, which deals with the reasons that excuse bishops and priests from residence. Four reasons are assigned by the Council of Trent, session 23, chapter 1, namely: Christian charity, urgent necessity, due obedience, and evident benefit to the Church or the commonwealth. However, the Council determines that, with regard to bishops who are to be excused, these reasons must be approved in writing, either by the Pope, or by the metropolitan, or, in the absence of the metropolitan, by the senior suffragan bishop residing there, who must attest to the metropolitan's absence. But now, recourse must always be made to the Pope, as stated in number 222, at the end. With regard to priests, the reasons must be approved by their ordinaries, as we have already stated. But each of these reasons must be considered individually. And first, pastors of souls are excused on the grounds of Christian charity, if they must be absent in order to reconcile animosities, especially those of powerful

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individuals, as Roncaglia states in chapter 2, question 4.

[*Latin ed. p. 217*]

Barb. all. 53., Holzm. page 434, number 428., Elb. volume 1, page 527, number 563., Tourn. volume 3, page 33., Salm. number 102., with Sot., Vasq., etc.; or to assist another church that is in need of their preaching, so that it may be freed from heresy or other grave vices: Pal. treatise 13, division 5, paragraph 4, also Ronc., Holzm., and Elb., canons; however, Pal. notes with Tol. and Barb. that this must not be done with a notable detriment to one's own church. 2. Pastors are excused by urgent necessity when they are in danger of external death from enemies (or of serious damage to their property, as Petroc. says in the aforementioned place); provided that the presence of the pastor is not necessary for the salvation of the faithful, namely, to confirm them in the faith or to administer the sacraments to them, and that sufficient provision is made for them through vicars, as the Doctors commonly teach in S. Th. 2-2, question 185, article 5, whose words we quoted in book 3, number 360. 3. It is doubted. Ronc. says in chapter 2, question 4, with Fagn. in the chapter on non-resident clergy, number 25 and 26, from the decree of the Holy See, that if a parish priest had a serious enmity, he could leave for six months, with a suitable vicar appointed and permission obtained, which could be extended if the enmity persisted; but after a year, the parish priest must absolutely resign or be transferred.

[*Latin ed. p. 218*]

The Church. Furthermore, it must be noted that such an absence is permitted only when there is a particular danger to the pastor himself, and not when there is a danger to the entire people, as occurs during a plague, as commonly taught by Fagn. l. c. n. 38, Tourn. t. 3. p. 33, Ronc. c. 2. quæst. 4, Spor. p. 74. n. 32, and Elb. t. 1. p. 529. n. 170; and Fagn. and Spor. report that the Sacred Congregation declared this on October 11, 1576, at the request of St. Charles Borromeo. And the same should be said regarding times of enemy incursions. Thus, pastors are excused from residence due to an internal danger of infirmity, for example, if it is necessary for them to be absent from their churches due to the unhealthiness of the air, as commonly taught by Caj. 2. 2. q. 185. art. 5, Petroc. de benef. t. 4. p. 505, Tourn. p. 33, Holzm. pag. 433. n. 428, Salm. n. 102, and Laym. l. 4. tr. 2. c. 6. n. 5, from c. Præsentium 7. q. 1, and c. Ad audientiam, de cler. non resid. However, as Tourn. and Salm. rightly point out, along with Bellarm., Vasq., and Hurt., the infirmity must not be perpetual, and the absence must not be gravely harmful to the flock; for then the pastor ought either to remain or to resign the care. Here, the rules prescribed by Benedict XIV on this matter of infirmity in the bulla Ad universæ, as mentioned above, must be

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noted, and which he commanded to be observed by those to whom...

[*Latin ed. p. 219*]

It concerns itself with this matter, and speaks thus: Those who have requested leave of absence, due to infirmity contracted outside the diocese while enjoying a vacation granted by the council, and alleging that, for this reason, their return to their own diocese is prohibited, must explain the nature of the infirmity and present a medical certificate, duly attested by a sworn physician. And when the requested leave is granted to them, it must always be granted for a specific and defined period, with the addition of a clause: "if the infirmity persists for so long." But those who have requested such leave, claiming that a change of air is necessary for their recovery from illnesses contracted while residing in their churches, must state in their petition the nature of the illnesses and how severely they are suffering, and must present a medical certificate, which, under oath, will testify that it is useful and necessary for the petitioner to move to another region and climate for a certain time. Nor should the following be left unmentioned: whether the petitioner, before being afflicted by illness, has used a three-month leave granted by the council; if he has not yet done so, and if the time granted by the council is deemed sufficient for him, it may be granted to him to remain absent from his residence for four months, during which, however, the council months must be included. But

[*Latin ed. p. 220*]

If those conciliar months, having removed all deceit and fraud, have already been spent outside the diocese, then only that amount of time shall be granted to him, as is prudently judged to be truly necessary for restoring his health. But he who shall request permission to remain outside the diocese on account of the harmfulness of the air, claiming that in his diocese, for a certain period of years, it has been unhealthy; let him carefully consider what he is doing. Indeed, let him clearly state in which months the air of the region is pernicious; also, whether this same unfavorable climate encompasses the entire diocese, so that no place within its territory exists where that suspect time can be spent without detriment to health; finally, whether he has already used the conciliar months. For if he has not yet taken them, he will easily obtain permission to be absent for four months (since the danger from the air is considered to last so long), but three of those months shall be counted towards the time permitted by the council. However, if he has already availed himself of the conciliar leave, it will be in vain for him to request a new leave, for the aforementioned reason, from the Apostolic See, and he must impute to himself that, knowing for certain that the air in his diocese would be unhealthy at a certain time of year, he did not reserve the granted vacation months for that time. In all grants of

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leave for reasons of unhealthy air,

[*Latin ed. p. 221*]

For the future, we wish to add this clause, provided that within the diocese there is no place where the air is healthy and where the bishop can reside.

3. Bishops or pastors are excused by reason of the debt of obedience if they are absent in order to obey the Pope or their superiors for the good of the Church or the Republic, as Elb. states, page 527, number 363; Salm. number 103; and Holzm. page 433, number 428; or for any other grave reason, as Tourn. states, page 34; provided that the absence is for a short time; otherwise, absolute necessity of the common good is required, as Salm. number 103 states, along with Caj., Gonzal., Soto, Vasq., etc.

As to whether a bishop can retain a pastor as his vicarius, visitor, or secretary, Nav., Silv., Oxeda, and others affirm this, as cited by Salm. number 121. But Bon. d. 5, q. 2, n. 4; Tourn. page 34; Ronc. c. 2, q. 4; Salm. number 122, along with Gonzal., Garc., etc., and Viva, opusc. 3, q. 3, art. 2, n. 8, deny this, and cite the Holy Congregation as having declared: "A bishop cannot use the services of a pastor in visitation or in another service of his diocese, except for the time permitted to him, which is two months." Pal. d. 5, p. 4, n. 9, along with Vasq., Azor., and Barb., makes an exception if there is such a need that there is no one else who can legitimately perform such tasks.

LIG. Theol. Mor. Vol. VII. K.

[*Latin ed. p. 222*]

4. Pastors are excused by reason of the evident utility to the Church or to the commonwealth, if they are absent for the purpose of attending provincial or diocesan synods, or in order to defend themselves or their own or the Church in a serious matter before the royal court, as Salm. n. 102 states, citing Soto and Vasquez, Ronc. c. 2, q. 4, and Bon. d. 5, p. 5, n. 12 (contrary to Nav.). Furthermore, a certain decision of the Roman Rota, from c. *Ex parte*, concerning non-resident clergy, states: "But if, without being absent in order to defraud, you faithfully pursue the rights of your prelate, you ought to be considered a resident." However, this must be understood (as Ronc. rightly observes in the aforementioned passage), provided that there is no one else who can equally effectively fulfill that duty. Moreover, Benedict XIV, in the aforementioned bull, prescribes that in such litigations, for the protection of the Church or the clergy, the bishop must explain the gravity of the matter and the reasons for which his presence is deemed necessary, and whether he has made use of the conciliar months: for if he has not yet made use of them, he must be instructed to use them for this purpose; but if he has already used them, he shall be granted permission to be absent, not until the end of the cause, but for as long as it is necessary to instruct lawyers and judges. However, if the litigation pertains to his own

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family, no other permission will be granted to him, except for the conciliar months. In no way, however, can they be absent, even...

[*Latin ed. p. 223*]

With the permission of the Pontiff, to perform the office of pro-regent, counselor, etc., unless it is required by the common good, as Azor., Sot., Bardi, Diana Veteranorum, etc., state in Salm. n. 105. But it is better to understand this, as Vasq., Barb., Garc., and Molf. teach in Bon. d. 5. p. 5. n. 9, unless there are others who are equally able and willing to faithfully perform such duties.

126. Question 4. When and how are bishops and pastors obligated to restore the fruits of their benefices? First of all, it is necessary to note what the Council of Trent has decreed on this point. For in session 6, chapter 1, it prescribed: "If anyone, having been entrusted with a title by a patriarchal, metropolitan, or cathedral church, should, for reasonable causes ceasing, be absent for six continuous months outside his diocese, he shall, by law, incur a penalty of forfeiting one-quarter of the fruits of one year, to be applied to the fabric of the church and the poor of the place by the superior ecclesiastical authority. And if he persists in such absence for another six months, he shall likewise forfeit another quarter of the fruits." Then, in session 23, chapter 1, it declared that a bishop who is absent from his church for more than three months and without just cause: in addition to other penalties imposed and innovated by Paul III against non-residents, and the guilt of mortal sin, he shall, in proportion to the time of absence, not...

[*Latin ed. p. 224*]

To render their fruits, even without further declaration, or to remit them through a superior ecclesiastical authority for the benefit of the churches or the poor of the place, without any agreement whatsoever. Furthermore, concerning the parish priests, the Holy Synod declares and decrees the following, with respect to the loss of fruits and penalties, as well as concerning the inferior curates, etc.: 127. However, it is doubted: 1. Whether pastors are obligated to restore the fruits, if they are absent without permission, but with a just cause. Viva, in opera, 3, question 3, article 3, number 7, denies this, and states that if the cause of absence is evidently just, they are not obligated to restore the fruits unless after a judgment of the judge, provided that they have sufficiently provided for their flock through others. The reason is that such restitution is not due unless the natural law of the contract is violated, which is not violated here; but only the positive law is injured: then a judgment is required, so that a penalty may be incurred. But concerning the bishops, something different must be said today, according to the aforementioned bull, by His Holiness Pope Benedict XIV, in "Ad Universas," where it is established that if a bishop is absent for more than

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the conciliar months without express permission from the Roman Pontiff, he is considered to have transgressed, and he does not render his fruits, and incurs the penalties imposed on transgressors. See note 122, at the end. It is doubted 2. Whether the fruits are to be restored,

[*Latin ed. p. 225*]

If the absence is blameless; because, namely, it was undertaken in good faith and with due consideration of the cause excusing him from residence. This is denied by Viva, *dict.*, book 3, chapter 9, and by Garc., apud Bon., book 5, page 4, chapter 10. The reason is that the obligation of restitution is either of positive law, as a penalty, and this is not due except after a sentence; or it is of natural law, and, out of the kindness of the Church, it is presumed that the Church does not wish to condemn to such restitution the beneficiary who, blamelessly, does not fulfill his obligation; just as the beneficiary who blamelessly omits the recitation of the office is not held to restore the fruits of the benefice, as the Doctors commonly teach (see the words in book 3, chapter 665). However, some authorities believe that the beneficiaries are bound by natural law to the office. But I do not at all agree with this opinion: for I believe that this obligation is not of positive law, but of natural and divine law, since pastors are held by natural and divine law to reside, as we have demonstrated from the Council of Trent above, chapter 121. Therefore, since pastors are held by natural law to reside, they are bound to it not by any other reason than the contract entered into between themselves and the Church, by which they are given the fruits of the benefices under the condition of residence; and if this condition is not fulfilled, even without fault, in no way do the pastors acquire such fruits. But the presumption that the Church...

[*Latin ed. p. 226*]

It is very doubtful whether it should be granted to those who, without fault, do not reside [in their benefice]; indeed, rather, it is presumed that the Church intends the opposite, lest a way be opened to evade this residence so strictly required by the Church itself; all the more so because N. P. Benedict XIV, in the aforementioned bull *Ad universæ*, expressly declared that bishops who are absent from their churches without a legitimate cause are to be considered transgressors and are not to enjoy the fruits [of their benefice]. Nor does the argument presented regarding beneficiaries who, without fault, neglect their office, present an obstacle: for (as we said in book 3, title n. 665, and as we shall say below in n. 145, question 1), the Doctors commonly teach, as Covarrubias, a defender of the contrary opinion, admits, that beneficiaries are not, in fact, bound to restitution of the fruits by natural law, but by positive law, from the Lateran Council and from the bull of St. Pius V, where such restitution is commanded to those who neglect their duties. The third doubt is whether pastors are bound to

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restore the fruits who reside uselessly in their churches. Garcés and Ledo, apud Viva, *cit.* opusc. 3, question 3, article 3, n. 8, deny this; because (they say) absence must be strictly interpreted; therefore, if they are always and not absent, they can enjoy the fruits, satisfying their obligations through others. But Viva, in the aforementioned place, more truthfully affirms this, because, as we have said, the restitution of fruits is truly owed by these not only by positive law, on account of the penalty, but also by natural law.

[*Latin ed. p. 227*]

By reason of a contract or condition of residence stipulated in the contract, which condition cannot be understood to refer solely to physical residence; for even if the restitution of fruits were not due by natural law, but solely by the penal law of the Council of Trent, still pastors residing uselessly would be obligated to restore the fruits; as the Council, in the aforementioned session, chapter 23, after declaring them obligated to personal residence, adds: "where they are bound to perform the office assigned to them"; and in the bull *Grave Benedicto* XIV, it is declared that residence is not true unless it is formal. Hence, the Doctors commonly say, as Salm. *Tractatus*, 28, number 114, with Vasquez, Barbatus, and Garcia, citing the declaration of the Sacred Congregation, that a parish priest is not considered to reside if he does not exercise the principal functions, namely, the administration of the divine word, the sacraments, etc. And concerning bishops, Sporus says, volume 3, page 73, number 27, that although they are not regularly, according to custom, bound to preach and administer the sacraments themselves, they must nevertheless personally oversee that others perform these duties, and furthermore, instruct the flock by a good example and assist the poor. It is said regularly: for I believe that bishops are sometimes obligated to preach, since they are, by divine law (as the Council of Trent declares, *Decretum*, chapter 1, session 23), bound to instruct their flock with the preaching of the divine word.

[*Latin ed. p. 228*]

to feed [their flocks]; and this is declared by the same Council, Session 5, chapter 2: All bishops and prelates are bound by themselves, if they are not legitimately hindered, to preach... But if anyone should despise fulfilling this duty, let him be subject to strict punishment. Regarding the obligation of pastors to preach and administer the sacraments, see the aforementioned law, book 3, number 269, and also here, number 358. Hurtado, in his book 5, on parish residencies, response 9, against Sanchez, does not consider it safe in conscience for a pastor who, residing in his parish, does not administer the sacraments himself for two months, unless another permanent vicar is established, as Salm states, number 114, with Gonzalez, Barbado, and Garcia. However, Viva, in the cited work, article 3, number 9, with Sanchez, considers it very probable that a bishop or pastor who is absent for a just

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cause, and even more so if he is residing uselessly in his church, for three months or two months respectively, as permitted by the Council, is not bound to restore the fruits [of the benefice]. This does not seem entirely improbable, since, according to the aforementioned Council, chapter 1, the aforementioned period is not considered a serious matter: for the Council uses the word "aliquantisper" for the absence of bishops for a quarter of a year, and for the absence of pastors for two months, it does not require a serious cause. Bon and Barbado, in Croix, book 3, page 1, number 752, state that...

[*Latin ed. p. 229*]

Only those who are pastors by virtue of their office, and not by actual residence, can entrust the entire care of the parish to vicars. However, pastors also sin mortally in deed, if they always minister through others, when they themselves could conveniently do so. Conversely, if they minister at times personally, especially the sacrament of penance, and at other times through vicars.

A doubt arises: whether a bishop or a non-resident parish priest is obligated to make full restitution of the fruits corresponding to the time of their absence. Navarrus, in *Commentaria* on *De Beneficiis*, book 5, paragraph 4, number 5, affirms this, stating that (as he says) the Council of Trent deprives those who are indefinitely absent of the fruits; for an indefinite proposition is equivalent to a universal one. However, Bonaventure, in the aforementioned place, and also Barbatus in *De Potestate Episcopi*, page 3, paragraph 43, number 10, Croix in *Tractatus*, book 3, page 1, number 737, and Viva in *Opera*, book 3, question 3, article 3, numbers 3 and 4, with Vasquez and the common opinion, as they assert, and also Viva, regarding all other beneficiaries bound to residence, argue this to be probable. And Bonaventure also states that all those doctors who excuse those who hold benefices from making full restitution of the fruits should also be excused from reciting the hours, as we mentioned in book 3, number 672, question 10. The reason is that the fruits are given to pastors not only for the burdens of residence, but also for the recitation of the divine office and other duties; therefore, the Council of Trent, since it has not expressed the contrary, should be understood to intend that the aforementioned pastors should be obligated to make restitution.

[*Latin ed. p. 230*]

Responding only to the fruits of residence, according to natural reason, which dictates that if someone is burdened with a double obligation, they should not be deprived of the full reward when one is removed. 128. Quest. 5th: To whom should the fruits be restored from those who are not residents? Here, a distinction must be noted between the restitution to be made from the beneficiary due to the omission of hours and that due to

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the omission of residence. The former can be made to any poor person and to the fabric of the benefice, or to the purchase or improvement of the lands of the benefice; because all these things are done in the name of the fabric of the benefice, as is said in the bull of St. Pius V. See the words in book 3, no. 6. 2. However, due to the omission of residence, the restitution must be entirely allocated either to the fabric of the church or to the poor of that place, as is decreed in the Council of Trent, session 23, chapter 1. V. Bon. q. 5, p. 4, and Viva, opuscle 3, q. 3, art. 4, no. 1. It does not suffice for the non-resident pastor to apply the restitution to Masses or other suffrages for the souls of purgatory in that place; because, truly, the souls of the deceased can no longer be considered poor of that place. Viva, in the aforementioned passage, with Lessius and, as he asserts, with common opinion, states that the beneficiary could rightly apply the restitution to himself in the case where he himself was truly poor, since he should not be in a lower condition than other poor people; provided that he does not do so fraudulently, namely, if he does not reside with the intention of later...

[*Latin ed. p. 231*]

He should then apply to himself the fruits of poverty: for fraud must be supported by no one, as we have said in book 3, number 672. And thus Viva says in number 4, although he makes an exception, if perhaps the beneficiary were to fall into grave necessity and, moved by penance, should propose to amend himself in the future. Furthermore, Viva in number 5, and Bonaventure in *De Horis Canonicis*, book 1, question 5, paragraph 4, number 10, along with Suarez, Navar, Azorín, and Menochius, teach in common that if the poor were to give to the beneficiary the fruits to be restored after their delivery, then he could rightly retain them; otherwise, if they were to give them before delivery; because in that case, the donation is null. For the poor have no certain and firm right to those fruits, but only a vague and uncertain one, since it is within the power of the beneficiary to choose which poor he wishes to assist.

129. Finally, it is necessary to note further things concerning the residence of canons in the place of the benefice. Above all, the words of the Council of Trent concerning this matter, found in session 24, chapter 12, on reform, should be noted: "Furthermore, to those holding dignities, canonries, and portions in the same cathedrals or collegiate churches, it is not permitted, by virtue of any statute or custom, to be absent for more than three months in any year, except for the constitutions of those churches which require a longer period of service; otherwise, each one shall be deprived of half of his portion in the first year."

[*Latin ed. p. 232*]

Of the fruits, which he has also obtained through his office and residence.

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But if this negligence is repeated, he shall be deprived of all the fruits which he has earned during the same year. Furthermore, if obstinacy increases, proceed against him according to the constitutions of the sacred canons. Moreover, from the diploma of His Holiness Pope Benedict XIV. (which we cited in book 5, number 675, question 5), it is stated that canons who do not participate in the choir, or who do not sing or chant, not only lose the distributions, as was already established in canon 12 of the Council (whose words we cited in the same place), but also all the fruits of their benefices, if they do not fulfill their duties. Therefore, if a canon does not fulfill his duties by not singing, much less does he fulfill them by not residing there. Furthermore, this is clearly deduced from the aforementioned passage of the Council, cited above (whatever Bonaventure may say in book 1, title 5, on the obligations of benefices pertaining to residence, page 4, number 16); there it is stated that a canon who does not reside for more than three months shall be deprived of half the fruits, which he has also obtained through his office and residence (note). Therefore, if a canon fulfills his duties by residing, he does not fulfill them by not residing. Bonaventure states (and this is very probable), in the aforementioned place, with Garrigou-Lagrange and Mæcigno, citing a declaration of the Sacred Congregation, that canons should not be deprived of their fruits if they are absent for only a few days beyond the three months; for such a transgression...

[*Latin ed. p. 233*]

It does not seem fitting that such a one should deserve to lose the aforementioned grave penalty of the deprivation of half the fruits. However, the canons, during the three months in which they are absent, do not enjoy distributions, but they do enjoy the fruits of the prebend; provided that (as the Council rightly states, *t. 2, p. 535, n. 32, cum Garc.*) they reside and attend the choir for the remainder of the year. Conversely, Paludanus, *tr. 7, d. 3, p. 9, n. 10*, and Bonaventure, *de hor. can. d. 2, q. 5, p. 4, n. 22 et 25*, state that canons who are absent for a greater part of the year do not, for that reason, lose the privilege of three months granted to them; because the privilege is not granted to those who reside, but to those who are obligated to reside. Otherwise, the canons would not be able to enjoy this privilege unless they had previously resided for nine months; which certainly would not be in accordance with the established custom, since they are accustomed to receive three months of the privilege in any part of the year. But I do not agree with this opinion, because the Council absolutely deprives those who are absent for more than three months of the fruits of the prebend, and also condemns them to restore half the fruits which they had acquired by reason of their residence. Therefore, according to the Council, after an absence of three months, they are entirely deprived of the aforementioned privilege. Whether a canon who wastefully squanders the three months granted by the Council is obligated to restore the fruits of the benefice, Paludanus and

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Navarrus state, apud Conc., p. 535, n. 32. But it is more probable...

[*Latin ed. p. 234*]

They deny this, namely Sanchez, Pellizzari, and Leandrus, on the grounds that the Council absolutely grants canon regulars an absence of three months, without requiring any special cause. However, canon regulars can rightly combine the quarter of a year granted with another quarter of the following year, as Pellizzari and Leandrus say. Unless, that is (the Council begins, page 535, note 33), a scandal arises or the divine worship is diminished. Furthermore, the Council reports, through Leandrus, that the Sacred Congregation declared that the aforementioned three months cannot be completed from the hours during which the canon regulars, residing there, are absent from the choir; also, that canon regulars cannot count credits for the three months themselves granted to them, so that they are not obligated to make restitution if all the credits of the year do not exceed one-quarter of the entire residence. Moreover, those regularly absent from the choir for a just cause receive both fruits and distributions, as is commonly stated by Bonaventure, *Dist.* 2, *q.* 7, *p.* 1; Salmeron, *Tr.* 16, *c.* 4, n. 11; the Council, *Conc.* 4, 5, *p.* 522, n. 2, etc.; whatever the case may be, as others deny, regarding the distributions that are due to them from the absence of the other canon regulars. Note here that, according to a decree of the Sacred Congregation cited by Jordan in *Pax* (*Elucubr.*, book 10, 4, n. 73), canon regulars cannot be absent from the diocese during conciliar months, unless with the permission of the bishop. 130. There are three causes that excuse canon regulars from attending the choir, as has been established.

[*Latin ed. p. 235*]

Boniface VIII, in chapter 1 concerning those clerics who do not reside [in their benefice], paragraph 6; namely, infirmity, a reasonable bodily necessity, and evident utility to the Church. And it is fitting here to note that he who does not reside because of these three causes expressly mentioned in the aforementioned text, is not deprived either of the fruits of his benefice, nor of distributions, as is evident from the same chapter cited. To these must be added a fourth cause (as Pikler believes, in *Cand. abbrev.*, Book 3, title 4, number 8), namely, custom introduced after the Council of Trent; for the Council abolished preceding customs. But he who does not reside because of causes different from the three aforementioned, but also just causes, such as study, visitation, and others, of which we shall speak later, (where the license of the bishop or prelate is always required), does indeed enjoy the fruits [of his benefice], but not the distributions, as Anacl. Book 3, title 4, numbers 134 and 163, and Holzm. volume 1, page 434, and others commonly state.

1. Therefore, infirmity is excused, not indeed a slight one, but only a

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grave one, or one that can become grave through access to the Church, as commonly taught by Pal. d. 3, page 9, § 1, number 2; Bon. q. 5, page 1, number 13; Conc. t. 2, page 522, number 2; and Salm. tr. 16, chapter 4, number 15, with Pell., etc. Furthermore, those who have contracted infirmity through their own fault are excused, as also commonly taught by Pal. number 3; Bon. number 7; Conc. number 3, with Nav., Sanch., and Salm. number 16, with Garc., Cov., and Pell.

[*Latin ed. p. 236*]

because the law excuses the infirm without distinction. And this, even if someone contracted a disease through his own actions, so that he should be absent from the choir, as Pal., Sal. II. cc. and Conc. n. 4, probably say, because the law regards infirmity, and not intention; and this, even if that person was accustomed to be absent from the choir before the infirmity, as Nav. l. 2. de rest. c. 11. n. 238, also Conc. l. c. n. 5, and Salm. with Nav. and Pal., who call this very probable (contrary to Bon. p. 1. n. 10. with Cov., Az. etc.), and rightly so, because infirmity excuses him now as well. Nor is there an obligation for him to assist, if he were able; for the laws do not punish except for blameworthy absence. Conversely, Sanch. cons. l. 2. c. 2. dub. go. n. 5., Pal. n. 6., Salm. n. 18, and Conc. p. 526. n. 6, with the common opinion, assert that if a canon is absent without a legitimate reason and becomes infirm, then he is considered culpably absent for the entire time of his absence. I do not wish to judge this opinion, which I hear called the common one; but it seems harsh to me that if someone, even without a cause, goes to another place and contracts a perpetual disease there, he should perpetually be deprived of the distributions and fruits of his prebend. It is doubted 1. whether those who have reached the age of seventy are absolutely excused from assisting in the choir. Leand. and others affirm this; but it seems truer to say that Conc. l. 2. p. 526 denies it.

[*Latin ed. p. 237*]

n. 8. If they are robust and accustomed to going out for ordinary business, then they should do so. Otherwise, if they are weak and less suited for a long journey, to the point that they cannot conveniently attend, as Bonaventure says, page 2, paragraph 6, with Azor, Menard, and others; therefore, Salmeron, chapter 4, paragraph 19, states that such elderly individuals are not regularly obligated to attend the choir, although they are not entirely excused.

2. It is doubtful whether the blind and the deaf are excused and whether they receive distributions if they are absent from the choir. Barbieri, Pellizzari, Diana, etc., state this in Salmeron, chapter 4, paragraph 18. And they infer, for example, in book 1, chapter "Concerning those afflicted," where it is said: "He who has lost the function of both eyes experiences a lessening of the benefits of personal possessions." However, Sanchez better argues

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against this in his "Consilia," book 2, chapter 2, doubt 6, and Salmeron agrees with Suarez, Navarrus, and Covarrubias; because the choir does not harm them, and by attending, they at least demonstrate their respect. However, a blind person should be excused if he could not, without significant inconvenience, access the church.

2. Is a reasonable bodily necessity an excuse? Under this heading is understood the fear of any serious harm to life, honor, or property. Therefore, those who remain at home to take medicine, to have a wound lanced, or who go to *balnea* or a place with a healthier climate are not deprived of distributions; likewise, those who are captured by enemies or who suffer unjust exile.

[*Latin ed. p. 238*]

Either they are detained by force, or out of fear of serious harm from enemies; thus, Bonaventure, *Quaestiones in Aristotelis Ethica*, 5, p. 2, no. 7; Salmeron, *Tractatus de Matrimonio*, 16, c. 4, no. 19; and the Council of Trent, *Sessionis XXIV, Decretum de Reformate*, 2, p. 526, no. 9, with common consent. It is also more probable to say this regarding one who is absent due to fear of war or a plague raging in the place of the benefice, as Bonaventure states in nos. 7 and 8; Palearius, *Tractatus de Matrimonio*, 7, d. 3, p. 9, § 2, no. 2; and Salmeron, with Vasquez, Pellican, Covarrubias, Garcia, etc., against the Council, Barbatus, etc., who concede that such a person may indeed receive the fruits of the benefice, but not the distributions. However, if someone is absent from the choir due to excommunication, he loses the distributions, if he is justly excommunicated; otherwise, if he is unjustly excommunicated, and he seeks to be absolved from the excommunication. Council of Trent, *Sessionis XXIV, Decretum de Reformate*, 2, p. 527, no. 10; and Salmeron, no. 21. Furthermore, the Council states that it is more probable that a suspended canon also loses these things, no. 12. If, however, someone is justly excommunicated, even if he is present in the choir, the Council states, no. 11, with Abbondanzio, Paludanus, Innocentius, Navarrus, Suarez, Toletanus, Fillonius, Silvanus, and with common consent, that he loses both the distributions and the fruits of the benefice. But Sanchez, *De Matrimonio*, 3, d. 51, no. 12; Bonaventure, p. 2, § 2; Palearius, p. 9, § 2, no. 4, with Coninchamp, Vasquez, and the Glossary on the chapter *Pastorali, §*; and Salmeron, c. 4, no. 21, with Navarrus, Pellican, etc., say that, although this person may be sinning by being present and may deserve to be deprived of distributions and fruits by the judge, nevertheless, it is nowhere established.

[*Latin ed. p. 239*]

This deprivation is, by right, imposed. However, if someone has been justly excommunicated and seeks absolution, they do not lose the distributions, if absolution is unjustly denied to them; for then, through no fault

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of their own, they are present. Thus, Pal. p. 9. §. 2. n. 4., in common with Suar., Vasq., Silvest., Arm., Sa, Henr., Sayr., Lop., etc. When, however, the church is under interdict, those canons who are not present do not lose the distributions, provided they have not given cause for the interdict; Council, loc. cit., n. 12. It is different in the case of the cessation of divine offices; then, even those who have not given cause for the cessation are deprived of the distributions, as the Council, loc. cit., Pal. n. 11, and Bon. p. 1. §. 5., in common with Suar. and Sayr., from cap. Canonici, §. Sciscitari, de off. ordin. in 6., where it is stated that those who have given cause for the cessation must restore to the canons all the interest which they lose from the omitted attendance at divine offices. Similarly, when the church is polluted, those who have not given cause for the pollution do not lose the distributions. Thus, Pal. p. 9. §. 2. n. 10., Council, d. n. 12., in common with Suar., Bon., Sayr., Trull., Henr., and others. The question arises here whether canons who are irregular lose the distributions and the fruits of their prebends. If the irregularity occurred after the collation of the benefice, it is certain and commonly held that...

[*Latin ed. p. 240*]

which neither are lost. Thus, Council, tome 2, page 527, paragraph 12. But it is doubtful when the irregularity occurred before the collation. This question entirely depends on another: whether the collation made to an irregular cleric is, in itself, invalid. Palearius, in *De Censoribus*, tractate 2, page 5, paragraph 7, Elbing, tome 2, page 457, paragraph 158, Roncaglia, in *De Censoribus*, chapter 1, question 5, response 1, and Salmerius, tractate 10, chapter 7, paragraph 34, along with Sylvester, Felinus, Leander, Layman, Lessius, Suarez, and others, consider this opinion probable. They say that this collation is indeed illicit, and has no validity in external matters, but is valid in conscience. The reason is that, since no irregularity is incurred unless it is expressly stated in law, so much less is its effect incurred, such as the inability to obtain benefices; and this effect is nowhere expressly found in the law. However, it is affirmed with greater probability by the Council, in the same place, and by Contenson, in *De Irregularitatibus*, tome 2, page 12, Holzmüller, tome 1, page 411, paragraph 320, and Bona, in *De Irregularitatibus*, tractate 5, page 4, paragraph 6, along with others; and even Salmerius himself admits that this opinion is commonly held. It is proven first from chapter 2, concerning clerics who fight in a duel, where it is said that dispensation can be granted to an irregular cleric so that he may possess a benefice; therefore, without dispensation, he himself is incapable of receiving benefices. It is proven second, and more strongly, from the Council of Trent, session 22, chapter 4, concerning reforms, where the Council, speaking of those who are collated, says: "Let it not be done

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for others in the future..."

[*Latin ed. p. 241*]

The provision, unless it is applied to those who are already judged to possess the necessary age and other qualifications; otherwise, the provision is invalid. Salm and Ronc, in response to this passage (which Salm himself admits is difficult to resolve), state that "other qualifications" should be understood to refer to qualifications derived from natural law, and not from positive law. However, this response is not satisfactory, for the Council, when it requires qualifications in an unqualified and complete manner, certainly intends to include all necessary qualifications, both those derived from natural law and those derived from positive law; and this appears to be expressly declared there, when it is said: "those who already possess the age, etc.," that is, the age required for receiving orders, as the Council had prescribed; and this qualification is certainly one derived from positive law. Therefore, it is more likely that the Council, in the aforementioned passage, intends that clerics who receive benefices after an irregularity are, by the very fact, deprived of the right to receive distributions and fruits from the benefice.

3. The utility of the Church is an excuse: provided that the utility is of significant importance, as judged by the bishop or chapter, and is for the Church itself, or for the universal Church, or for the entire diocese, and not for another particular Church, as stated in Council, volume 2, page 528, paragraph 14, and in Salm, book 16, chapter 4, paragraph 23. However, some, from chapter "Cum non deceat," concerning non-resident clerics, in paragraph 6, argue that those who are absent from the benefice due to the utility of the Church are not entitled to receive distributions.

[*Latin ed. p. 242*]

Those who are absent from their churches on business are deprived of distributions. However, Salm, in the aforementioned work, chapter 24, number 24, with Palazzi, Pellizzari, etc., affirms this, and it is considered quite probable by the Council, number 15, based on canon 6 of the code of canon law concerning non-resident clergy, where the privilege is absolutely granted to those who are absent for the evident benefit of the Church. Another text is understood to refer only to the case in which a prebendary comes to the Apostolic See for the purpose of instruction regarding an election. Similarly, the canon who is sent (for only one can be sent) by the bishop to visit the thresholds of the Apostles is excused, as is commonly held with the Council, number 16. The same is said of the canon who accompanies his bishop to the same thresholds, according to the decree of Sixtus V, cited by the Council, who there states that the bishop visiting the thresholds can also bring two canons with him. The same applies to a canon sent to a provincial council as a theologian,

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canonist, or procurator, as is considered probable by the Council, page 529, number 17, and by Salm, chapter 4, number 24, with Palazzi, Pellizzari, etc. The same applies if a canon is sent by the chapter to the Pope or a prince as a legate to conduct the affairs of the Church: the Council states this. The same applies if a capitular vicar is elected when the see is vacant, as the Doctors commonly teach; because in this case, the benefit of the entire diocese is at stake. Conversely, if a vicar of the bishop is elected, because then the benefit pertains to the bishop, not to the Church.

[*Latin ed. p. 243*]

He serves. For he does indeed gain the fruits of the benefice, but not the distributions. Pal. p. 9. §. 7. n. 2., Salm. c. 3. n. 34., Conc. p. 529. n. 18. et 24. 131. However, a canon penitentiarius is not deprived of distributions if, during his office, he hears confessions, according to the Council of Trent, session 14, chapter 8, where it is said: "A certain penitentiarius shall be appointed by the bishop, in conjunction with a benefice soon to become vacant, who shall be a master or doctor, or a licentiate in theology or canon law, and shall have completed 40 years, or another who is more suitable for the quality of the place, who, while hearing confessions in the church, shall be considered present in the choir in the meantime. But there is doubt whether the penitentiarius who remains in the confessional during his office, awaiting penitents to come, gains distributions. Barb. de pot. ep. alleg. 65. n. 30. denies this, along with Garc., Ugolin., Salaz. and Moneta, who state that a decision should not be made in favor of the penitentiarius who resides in the confessional, even if he hears confessions more opportunely, being present in the choir. But it is truer, according to Salm. c. 4. n. 31. along with Barb., Bon., Pell., Ronc. tr. 6. c. 2. q. 9. r. 1. and Conc., with Pal. and Leand., that if penitents are accustomed to come, and the penitentiarius intends to be present to assist them promptly, according to a declaration of the Holy See, as reported by Barb. in the Council of Trent.

[*Latin ed. p. 244*]

Session 24, chapter 8, concerning the church of Ávila, it is decreed that a confessor should be present in the confessional, so that penitents are not compelled to seek him out, and, because of the difficulty of finding him, do not omit their confessions. And the same is said of a canon who substitutes for the confessor, provided that the substitution is not made fraudulently; and of others who assist the confessor by order of a superior, in times of great need. Council, ibid., and Castr., book 1, chapter 4, number 3. Furthermore, Barbarius, in the Tridentine Council, session 24, chapter 8, number 29, and Castr., number 2, and Bonaventure, book 1, on ecclesiastical hours, chapter 2, question 5, paragraph 3, number 5, with Salazar and Garcia, from another passage, declare. The Sacred Congregation, in a decree of Ghent, September 4, 1591, declares that the confessor is to be considered present

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even in processions, prayers, and funeral services, which take place during the time when he is hearing confessions. What is said of the confessor, the same is said of the canon who is the pastor, who is exercising the duties of his office, Palafox, page 9, paragraph 3, number 8, and Salmanticensis, chapter 4, number 26, with Barbarius, Garcia, Guttierrez, and the Council, page 53, number 22; who holds the same opinion, even if the church of which he has care is different from the church where the canon resides, provided that it is within the same diocese. But this is contradicted by Bonaventure, book 1, question 5, paragraph 3, number 6, number 5. However, those who are absent in order to protect the rights of their benefice do not lose their distributions; on the other hand, if they defend their right to the benefice against another, they do not lose their distributions. Council, ibid.

[*Latin ed. p. 245*]

Thus, likewise, the canon theologian who reads or preaches during the time of office benefits from the distributions, as all commonly teach; and even if, during other hours of the same day (but not the preceding one), he prepares himself to read or preach, as Ronc. c. 2, q. 6, r. 2, states with common opinion, by concession of Gregory XIII, and Conc. p. 531, n. 21, with a more common opinion from the declaration of the Holy See, as cited by Garc., which contradicts. However, Conc. p. 532, n. 22, Pal. p. 9, §. 7, n. 1, Ronc. r. 3, and Salm. c. 4, n. 34, with Garc., Pell., etc., contradict Barb. and Zechius, as cited by Pal., stating that canon chaplains, while absent from the choir (unless there is a different custom elsewhere), do not benefit from the distributions. The same is said of canon chaplains appointed by the bishop to visit the hospitals and churches of the diocese; because these are not occupied in the service of their own church. However, the bishop can have two canon chaplains in his service, as stated in cap. De cœtero etc., Ad audientiam, de cler. non res., who benefit from the fruits of their prebends, but not from the distributions, as Ronc. l. c. and Salm. n. 125, state, from the declaration of the Holy See. Nevertheless, Conc. n. 23 states that canon chaplains assisting the bishop in solemnly celebrating [Mass] do benefit from the distributions. However, canon chaplains absent from the choir during the time of office, so that the chapters may be celebrated, lose both the distributions and the fruits of their prebends; because during the time of office, or Lic. Theol. Mor. T. VII. L.

[*Latin ed. p. 246*]

It is forbidden for those who chant in the choir to celebrate the Divine Office, unless a grave matter arises which does not allow for delay. Council, ibid., 152. Finally, it should be noted that those who teach in public schools (but not in private schools) although they may not receive remuneration for teaching the sacred Scriptures, nevertheless acquire the fruits of their benefices, according to the Council of Trent, Session V, chapter 1,

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at the end. The same is said in the final chapter concerning teachers of theology. And this is commonly extended by the Doctors of the Church to those who teach Canon Law, as stated by Palafox, page 9, § 9, number 1; Roncaglia, on benefices, chapter 2, question 6, response 3; the Council, volume 2, page 533, number 24; and Salmeron, treatise 28, numbers 129 and 130, with Sanchez, Filliu, and Garcia, who cite a declaration from the Holy See on this matter. The same is said concerning those who teach grammar, as stated by Palafox, number 3; the Council, number 26; Roncaglia, in the place cited; and Salmeron, treatise 16, chapter 4, number 37. Furthermore, Salmeron holds the same opinion concerning those who teach logic and philosophy; because (as they say) all these subjects are necessarily preliminary to the study of theology. However, the Council, number 25, denies that parish priests who teach the sacred Scriptures, theology, or Canon Law enjoy the same privilege; because, in the Council of Trent, the parish priest is absolutely forbidden to be absent for more than two months. But Palafox, number 4; Salmeron, in his dictionary, number 37; and Roncaglia, in the place cited, with Gonzalez and Barbieri, etc., probably admit this. The reason is that in the aforementioned chapter concerning teachers, the term "teachers" is used in a general sense, applying to all.

[*Latin ed. p. 247*]

To those teaching in the theological faculty, the privilege or exemption from residence is granted; and this privilege is not held in the Council of Trent, which clearly (as it ought to be) revoked it there: but the words of the text mentioned above are these: "Those who teach in the theological faculty, while they teach in schools, and students in that faculty receive instruction from them faithfully for five years, shall, by the general license granted by the authority of this constitution, as the Glossa explains there, of the Apostolic See, enjoy the revenues of their prebends and benefices, notwithstanding any other custom or statute; but they must not defraud those who work in the vineyard of the Lord." The reason for this is because it redounds to the good of the entire diocese, indeed of the universal Church. The same privilege is certainly granted to students holding prebends in the university, according to the Council of Trent, loc. cit., and according to the cited chapter, end, on major orders, and chapter 11, on privileges, in book 6, and chapter "De clericis non residentibus," provided that they devote themselves to their studies for at least the greater part of the year, as the Council says, number 27, and Palafox, number 5, with Bonaventure, Barbatus, etc., and provided that they have a license for this (which is indeed not required for those who teach), as Palafox says, page 9, section 9, number 7, Roncaglia, question 6, response 3, Council, number 28, from Salmeron, treatise 28, number 130, with Barbatus and Garcia, from the Bull of Pius IV, "Ad aures," issued on November 24, 1564. But this license is

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granted to them for a period of five years, if they hear the sacred offices.

[*Latin ed. p. 248*]

Canons; for a period of seven years, if they hear the sacred Scriptures or theology: Psalm 138, verse 8, with García and Barbieri. Whether parish priests studying theology are excused from residence after two months, as granted to them by the Council of Trent, Navarret, Toledo, Lessius, etc., state in Palafoxius, number 1, and this is considered probable by Palafoxius, ibid., and by Salm, book 1, chapter 16, number 39. Because in the aforementioned chapter, at the end, those who teach, like the students, enjoy the same privilege. But it is more probable that the Council denies this, page 534, number 29, Roncaglia, question 6, response 3, Palafoxius, number 1, Salm, book 1, with González, Barbieri, García, etc. The reason is, first, because the Council of Trent declared that parish priests cannot be absent for more than two months unless for a serious reason, and the Sacred Congregation declared, according to García, that the reason of studies is by no means a serious reason; secondly, because the aforementioned privilege was granted only to those who are learning, and therefore it cannot be granted to parish priests, who are already presumed to be instructed. Salm, number 128, citing a declaration of the Sacred Congregation, states that if the Pope grants someone permission to be absent for the sake of studies, this is not valid unless the consent of the ordinary is added. And in the same way, Pius IV is said to have declared this regarding those who attend studies in the court of *romana*. Here, it should be noted in passing that in the aforementioned chapter, at the end, archdeacons, deans, vicars, superiors, singers, and other clerics holding offices, as well as presbyters, are prohibited from studying civil or medical law under penalty.

[*Latin ed. p. 249*]

Excommunicationis latae sententiae, si infra duos menses ab tali studio non desisterint. (Attamen Bonaventure, in *De Censuris*, dist. 2, q. 4, p. 7, n. 4, dicit quod hoc non intelligitur de studio privato; nec si lector audiretur in domo, ut probabile putat cum Tolosa, Caldera, etc.; neque intelligitur de docentibus, ut sentiunt Sanchez, lib. 6, cap. 8, n. 91, et idem Bonaventure cum Tabulario et aliis.) Unde tales studenti privantur fructibus propriis praebendarum, ut dicunt Palearius, loc. cit., p. 9, n. 6, et Salmeron, cap. 4, n. 38, cum Bonaventure et Barbatus. Attamen, diximus illos magistros aut scholares excusatos lucrari quidem fructus beneficiorum, non vero distributiones. Si tamen beneficium constaret ex solis distributionibus, has etiam lucrari dicit Concilium, p. 533, n. 27, cum communi ex declaratione Sacrae Congregationis apud Garcias (contra Bonaventuram); quia tunc distributiones succedunt loco fructuum. Et idem Concilium ait, p. 536, n. 35, de dispensatis a choro, quando beneficium tantum ex distributionibus conflatur. Excipit tamen Concilium contra alios; si sint distributiones minores

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pro anniversariis; quia testatores nolunt has dari nisi assistentibus.

[*Latin ed. p. 250*]

IN WHAT WAYS BENEFITS ARE LOST. 133. In what ways are benefits lost? 134. What is resignation, and in how many ways does it occur? 135. What is required for a conditional resignation to be valid? 136. What is to be said about the exchange of benefits? 133. *Response.* 1.° Benefits are lost in four ways. 1.° By the death of the beneficiary. 2.° By the disposition of the law, and this occurs either because the acquisition of another benefit is impossible, or through a religious profession, or through a marriage contract, or through the commission of a crime (e.g., heresy, schism, or frequently committed sodomy) to which the loss of the benefit is attached by its very nature, as is seen in Lessius, book 2, chapter 34, sections 34-36. 3.° By a judicial sentence. 4.° By a free resignation, which will be discussed. 134. *Response.* 2.° Resignation is the spontaneous relinquishment of one's own benefit, made before a legitimate superior who accepts it. It is twofold: namely, tacit, which occurs by the disposition of the law; as when someone professes a religious life; and express, which is also twofold: namely, pure, which is made without any condition or agreement placed before the ordinary who can grant the benefit to another; and conditional or in favor; and this is either simple, in favor, as when it is made without reservation; or it is...

[*Latin ed. p. 251*]

A dispensation, that is to say, when a just return or pension, or some other benefit, is reserved for him, which, due to simony, can only be granted by the hands of the Pontiff. And although it is truer that even a simple resignation should be made in the hands of the Pontiff, lest otherwise the resignations of benefices acquire a certain appearance of hereditary succession, which the canons condemn; it is nevertheless probable that it can be done in the hands of the ordinary, since a commutation can be made in his hands. (But this is entirely contrary to Salm. de simon. c. 3. n. 52, with common opinion. See also the words in V. de simon. l. 3. n. 81.) And this is even more true if it is made without an obligatory condition, although a request is added that it be granted to a certain person: and this can be observed where the bull of Pius V, which prohibits the designation of any person to succeed, is not received, as Laym. cites in chapter 17, "155." Furthermore, in order for a conditional resignation to be valid, it is required that: 1. the benefice be that of the one resigning; since resignation is the relinquishment of one's own right. 2. That it be done freely. 3. That it be done in the hands of one who can admit it, namely, the Pontiff, the ordinary, the bestower, or the institutioner, according to what has been said. 4. That it be accepted by the prelate in whose hands it is made; because without acceptance, the one resigning does not lose his right. 5. That it be granted

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to the one in whose favor it is made, with a condition.

[*Latin ed. p. 252*]

It is customary—in no other way, nor in any other manner—that it be submitted. 6. That he to whom it is offered accept it; otherwise, the one resigning does not lose the benefit, because of the clause—in no other way. 7. The consent of the patron or the electors is required, depending on whether the benefice is a patronage or an elective one. 8. If the one resigning is infirm, it is required that he survive the resignation by 20 days; otherwise, he will be considered to have become vacant by death. 9. If the resignation is made in the *curia romana*, it must be published within 6 months from the date of the petition offered, calculated at the place of the benefice; but if it is made outside the *curia*, within one month; otherwise, if it happens that the one resigning dies before the resignee takes possession, the benefice will be considered vacant. *Less. et Laym. c. 17.* » 136. » *Resp. 3.º* The exchange of benefices, which is a certain kind of conditional resignation, takes place when two beneficiaries, holding one or more benefices not reserved to the Pontiff, and held under the authority of another ordinary or bishop, resign them to the Pontiff with the condition that, afterwards, they will reciprocally grant each other the other's benefice. This is something that a bishop can sometimes institute, if necessity so demands; but the interested parties, namely the patron and the inferior collator, must be called. For this, everything is required that is required for a resignation in favor. *V. Less. c. 31. d. 35. et 36., Laym. c. 17., Bon. de sim. d. 1. q. 4. §. 12. (V. lib. 3. n. 72.)* »

[*Latin ed. p. 253*]

Ques. 1.º Whether exchanges of benefices are permissible before ordinaries during the months reserved by the concordats of Germany. Answer: Affirmative, because by the reservation of the concordats, the Holy Father is not considered to have intended to make the condition of the ordinaries of Germany worse than that of bishops outside of Germany, before whom such exchanges are simply permitted.

Ques. 2.º Whether it is permissible to exchange benefices, with equality of fruits.

Answer: 1.º It is not permissible, if a more lucrative benefice, not separately by its fruits, is exchanged for a less lucrative one. The reason is, because that excess, by the very fact that it remains attached to the benefice, is due to the benefice, and therefore nothing can be demanded for it, except that which is also demanded for the benefice itself.

Answer: 2.º It is possible to request compensation from the Holy Father for the temporary disadvantage that one suffers by such an exchange, by being deprived of the fruits of one's own benefice; and therefore, such compensation is not the price of the benefice or of the annexed fruits, but

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a condition so that one may remain unharmed, without which condition one would not wish to be deprived.

Answer: 3.º The rights to the fruits can be separated from the titles; and first, bare titles, and then, by another contract, the rights to the fruits, whether temporal or otherwise, can be exchanged, with the excess of the more lucrative benefice being compensated. This is done by the authority of the Pope alone. See Less. loc. cit., Bon. loc. cit. §. 12. n. 11. (See also l. 3. n. 75 and 76.)

[*Latin ed. p. 254*]

Question 3: Whether it is lawful to exchange a benefice according to this law, so that the expenses of the lawsuit or the cost of bulls are reimbursed by the recipient.

Answer: It seems to be a simoniacal exchange if the expenses are the motivating cause of the exchange, without which the act would not have taken place. I would say the same about a similar resignation. *Less. l. c.*, *Bon. l. c. n. 6.*

ARTICLE SIX: WHAT AND HOW MANY KINDS OF PENSIONS EXIST.

137. What is a pension, and how many kinds are there?

138. From whom, and in what amount, can a pension be granted?

139. Can the pension holder freely dispose of it?

137. Answer: A pension is the right to receive the fruits from another's benefice. It is threefold: 1st, a temporal pension, which is given for a temporal ministry, for example, to a singer, a sacristan, a patron, and a defender of the Church; 2nd, a spiritual pension, which is founded on a purely spiritual title; such as that given to a preacher, a coadjutor bishop, a parish priest, etc.; 3rd, a *media* pension, which is founded on a spiritual status, but not on a spiritual office; such as that given to a poor cleric or an elderly parish priest for support; or that given as a cause for resignation and to settle a lawsuit. The two latter are called clerical pensions, because they are given to clerics; the first is called a lay pension, because it is given only to lay people.

138. Furthermore, concerning pensions, see Laym. c. 18.

[*Latin ed. p. 255*]

And these things are taught by Lessius. 1. Although it is proper for the Pope to grant pensions, nevertheless, a bishop can also do so in special and necessary cases: for example, due to the poverty and old age of someone, or for the settlement of a dispute, or for obtaining suitable results in the exchange of benefices. (See Volume 1, page 3, number 73.) 2. It must be moderate, so that the recipient is left with sufficient sustenance; such a

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pension is generally considered to be one-third of the fruits (Salm. de benef. cap. unic. n. 46). 3. A pension does not require the consent of the patron, as some believe; because this is not established by any law. Nor is any prejudice caused by the imposition of a pension; since the recipient does not receive the fruits from the benefice, but only has the right to institute and present [cases], which is not taken away from him. 4. A pensioner, after the Constitution of Pius V, where the pension is received, is obligated to recite the Office of the Blessed Virgin, and does not receive the fruits if he omits it. (This refers to the pension which someone receives as a cleric. See Salm. de benef. n. 64. Also, those who are not obligated by this duty are those who recite the greater office, or those who become knights of a military order, since they fulfill the prayers prescribed by religion. Thus Azor., Pal., Bon., Led. with Salm. loc. cit. and de hor. can. c. 2, n. 28.) 5. A pension is extinguished by the death of the pensioner, just as usufruct is extinguished by the death of the usufructuary. However, the Pope could make it perpetual, according to...

[*Latin ed. p. 256*]

With the fullness of power. Concerning the sale of a pension, see Layman, chapter 18, and Lessius, book 2, chapter 25, section 22; and Bonaventure, in loco cited, § 13, number 159. The question is: Can the pension holder freely dispose of the revenues of the pension? Vasquez, Azorín, and Covarrubias, among others, affirm this, as cited by Salmeron, *De Beneficiis*, chapter 1, number 63. For they say that a pension is already a portion extracted from the fruits of the benefice. And in support of this view, there is a decision of the Roman Rota, which Azorín cites on page 2, line 7, chapter 9, question 12, in which it was decided that pensions that have accrued and have not been paid are not to be included among the spoils (as the fruits of benefices are counted), but rather pass to the heirs; because a pension is not a benefice, but consists solely of temporal things. However, Navarret, Mollerus, and Garcia deny this, arguing that a pension must be subject to the same rules as benefices, since it is equivalent to them. But Salmeron, *ibid.*, makes a distinction and affirms this regarding a lay pension, but denies it regarding an ecclesiastical pension. All three opinions are probable. See book 3, number 491, question 6.

SECOND DOUBT. CONCERNING THE CANONICAL HOURS.

FIRST ARTICLE. WHO ARE OBLIGATED TO OBSERVE THE HOURS.

140. Which clerics are obligated to perform the office? What portion of the office are subdeacons obligated to recite on the day of their ordination?

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And whether a subdeacon who...

[*Latin ed. p. 257*]

140. He who recites the office before ordination, is bound to repeat it. 141. Are all religious and monks bound to observe the canonical hours? 142. Are religious not established in the sacred duties, and monks not reciting the office in the choir, bound to recite it privately? Doubt 1. Are those ejected from religious life bound to the office? Doubt 2. Are refugees bound to the office? Doubt 3. Are those condemned to the galleys bound to the office? Are those living outside the cloister bound to the office? 143. Note 1. When are religious bound to recite in the choir? What if they are occupied? Note 2. Do prelates sin gravely by neglecting the recitation of the office in the choir? Are bishops bound to recite in the choir? Note 3. Are those who receive fewer benefits bound to make up for what they lack, so that they may serve the choir? Is it sufficient for a grave sin to be committed in the choir by omitting a smaller part than in private recitation of the office? 144. Concerning the obligation of beneficiaries regarding the office. Is a beneficiary ordained under grave duress bound to the office? See other points in Bus. 145. Question 1. How many sins does a priest commit by omitting the office? Question 2. Does a beneficiary sin gravely by omitting the office, if he intends to restore the fruits?

140. » R ESP. 1. Clerics of the higher orders, even those suspended, excommunicated, or degraded, are bound by both ecclesiastical law and the general custom of the Church. » I said "higher orders," because the lower orders are not only not bound to the hours, but not even to the psalm *Miserere*, to which...

[*Latin ed. p. 258*]

Consider, for example, when a bishop, conferring the first tonsure, seems to impose an obligation only to recite the canonical hours a few times, or merely as a matter of counsel. *Less. l. i. c. 37. d. 9.* "From this, these cases are resolved: 1st. He is bound to the canonical hours who, with a papal dispensation, has taken a wife; unless he himself has been dispensed in this matter: because the dispensation, being odious, must be strictly interpreted and retains the character [of obligation]. *Bon. et Azor. loc. cit. cap. 5. contra alios.*" 2nd. The cleric begins to be bound from the moment he receives the subdiaconate; and indeed, to the hours corresponding to the hours at which he is ordained. *Bon. tr. de horis q. i. punct. 5. ex communi.*" From this, Croix writes in book 4, number 1187, with Azor and Stoz, that the subdeacon is bound on the day he is ordained to the hour that would then be recited in the choir. Therefore, if he is ordained at the eleventh hour, Croix, with Bonart, considers it probable that he is only bound until Vespers, since at that time, other hours would already have been legitimately completed in the choir. But I do not agree with this opinion; because it is

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truer that the ordained person is bound to the hour that corresponds to the hour in which he assumes the obligation; therefore, he is regularly bound to recite from the sixth hour, as the Council rightly states, *t. 2. p. 397. n. 5*, to which Pal. and Gob. adhere. But does the subdeacon who has recited that part before his ordination remain bound by his obligation?

[*Latin ed. p. 259*]

It has been satisfied, as Tournhem states in Volume 1, page 619, and Croix in Volume 4, number 1187, following Bellarmine, Palearius, and others; secondly, because a debt cannot be satisfied before it is contracted; and thirdly, because the Church requires that subdeacons fulfill this obligation in her name. But one who is not yet a subdeacon cannot perform this obligation in the name of the Church. However, Tamborini in Decrees, Volume 2, chapter 5, number 9, and Lugo, Trullianus, and Gobinus, as cited by Dionysius in page 6, treatise 6, response 38, maintain, and Croix and Viva in question 3, article 1, number 8, consider it probable, that this debt can indeed be paid in advance, since it is certainly morally obligatory. The first opinion seems more probable; because the Church requires that the subdeacon fulfill this obligation in her name; but one who is not a subdeacon, nor appointed by the Church as a public minister, cannot recite in the name of the Church, nor perform a public prayer. But it could be argued that an excommunicated priest also cannot pray in the name of the Church, nor perform a public prayer; and yet he is certainly obligated to recite the Divine Office, and by reciting it, he satisfies the obligation; therefore, it is not necessary for the one reciting to pray in the name of the Church in order to fulfill the obligation. Therefore, I still consider the second opinion to be probable. 141. "Response 2. All religious who have made solemn vows and are assigned to the choir, of both sexes, are obligated to the Divine Office, and this is according to an ancient and accepted custom; although some, such as Arag[o],..."

[*Latin ed. p. 260*]

They believe that they are not bound so strictly that they would commit a mortal sin if they omit the hours twice in a row. And concerning nuns, Cajetan, Medina, Arminius, and Dionysius (tr. 12, r. 17) express doubt. Indeed, Peter, as stated by Marchius in Dionysius (p. 9, tr. 6, res. 7), teaches that they (and therefore all religious who are not initiated into the sacraments) are not absolutely bound by the obligation of sin, but rather very loosely, contrary to the common and true opinion of others, which teaches that they are bound according to their rules and customs. Bonaventure (q. 2, p. 2, n. 5), citing Azor, Lessius, and Malderus, states: "Therefore, they are not bound to the hours of: 1st, novices; 2nd, those who have made a simple vow; 3rd, soldiers, hospital attendants, and others not destined for the choir." (Trull. l. c. c. 7, d. 12, §. 5). "2nd, He who passes from one religious order

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to another in which this custom does not exist, is not bound; because a custom does not obligate where it is not received." Thus, Suarez and Laÿman. The same applies to a religious person who has been expelled or who has obtained a dispensation to live permanently outside the monastery; because, although he remains a religious person, he is not, nevertheless, a member of a regular order. This is probable, according to Soto, Sanchez, and Bonaventure (d. 1, q. 2, p. 2, n. 4, etc.), contrary to Suarez. Here, some things should be noted concerning the institution of the Divine Office. The canonical hours, as is said, were instituted, at least in substance, in the time of the Apostles, as indicated in Acts 2, where it is narrated that the faithful were persevering.

[*Latin ed. p. 261*]

in the breaking of bread and in prayers; that is to say, in the Psalms, hymns, and spiritual canticles, singing and chanting, according to the Apostle to the Ephesians, chapter 5. And this was made clearer by Pope Clement I, in book 8, chapter 34 of his Apostolic Constitutions, where he commanded his clergy thus: "Pray in the morning, at the third hour, the sixth hour, and the ninth hour, and in the evening, and at the crowing of the cock." Furthermore, Gelasius I, as Azor and Fillius relate, established a public law by which clerics were compelled to perform the canonical hours seven times a day. Concerning the form of the breviary, Ralph reports that in the beginning of the 13th century, this collection was used in the papal court, and for this reason it is called the breviary. See other things on this subject in Thomas, *Discipline Ecclesiastica*, part 4, book 1, chapter 40, paragraph 142. First of all, it is necessary to note here several things concerning the obligation of religious to recite the Divine Office, and then concerning recitation in choir. Above all, this great question arises: are religious who are not established in the sacred orders, and monks, bound by a grave obligation to recite the Divine Office daily, at least privately? The first opinion denies this, and this is held by Bard in *Consilia*, question 30, Arminius in *Horae*, and the same in *Sacrae Litterae*, number 1, also Marchius, Martinus of St. Joseph, Castratus, Antonius of Spain, Medius in Salmeron's *Tractatus de Horis Canonicis*, chapter 2, numbers 16 and 17, and Lessius considers it probable in *Resolutiones Controversiarum*, after page 2, and Durandus in *Horae*, case 14. The reason is that although custom is present in this matter,

[*Latin ed. p. 262*]

However, it is not certain, as Cajetan, Ledo, Palacius, etc., state in Sanch. cons. 7, c. 2, dub. 3, n. 4, that it was introduced by religious with the intention of obliging themselves under a grave obligation. The second opinion holds that religious and monks do not commit a grave sin if they omit the office only a few times, and not frequently. The third opinion, which we fol-

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low and which is held by Lessius, l. 2, c. 37, n. 47, Sanch. cons. l. 7, c. 2, dub. 3, Anacl. p. 190, n. 18, Salm. l. c. n. 19, and Conc. t. 2, p. 399, ex n. 3, along with St. Antoninus, Gonet, Palagius, Tamburrini, Diana Veteranorum, Vasquez, and others, as well as Layman, tr. i, c. 6, n. 1 and 2, who rejects the contrary opinion, and Regius, apud Tamburrini, lib. 2, c. 5, dec. §. 1, n. 13, calls it reckless, and Diana considers it entirely reprehensible, and reports that P. Mutius Vitelleschi, prefect general of the Society of Jesus, in the year 1625, forbade anyone in his order from teaching that opinion as probable, and that it had been condemned by the universities of Hispalensi (Seville), Coimbra, etc., and that, at the order of the Pope, it had been erased from the book of Emmanuel Sa. Our opinion teaches that they are bound by a grave obligation to recite the office daily, as already prescribed by custom. It does not hold that it is uncertain that it was introduced by religious with the intention of obliging themselves under a grave obligation; for, according to the general rule, possession is understood to be for the purpose for which it is presumed.

[*Latin ed. p. 263*]

However, this custom has been consistently observed by religious and nuns universally, and prelates have always severely reprimanded those who do not observe it, which provides sufficient presumption that those reciting it have truly introduced this custom with the intention of obligating themselves. Therefore, if presumption holds for obligation, then possession also holds for it. See the words spoken in a similar case concerning abstinence from dairy products, book 3, number 1009. See Doubt 3. However, the Common Doctors grant in the first place that prelates, even those of lower rank, can, for a reason, such as studies and the like, grant a dispensation to their subjects not to recite the office, as in other observances. Thus, Salm. number 20, with Lessius, Garcia, Villalobos, and Tamburrino. They grant in the second place that, if in any religious order there were no such custom, such an obligation would not exist in that order; Salm., ibid., with Bonaventure, Cajetan, Sanchez, etc. Regarding the privileges of religious concerning the Divine Office, see the words in number 63. Doubt 1: Whether religious who have been expelled by sentence are bound to the office. Cabassol affirms in his "Jus Eccles." book 1, chapter 21, number 18; Conciliarius, book 2, page 403, number 16; Anaclasius, page 191, number 35, with Azorín and Navarret; because they retain their status and are still considered religious. But it is not improbably denied by Busenius, Sanchez in "De Matrimonio," book 8, division 8, number 11; Lessius, book 2, chapter 37, number 50.

[*Latin ed. p. 264*]

As Soto and Laym state in book 4, treatise 1, chapter 4, paragraph 2, who call this a safe opinion. The reason is that in them, the essence of the

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religious state is already extinguished, since they are no longer bound by their vows, as Sanchéz supposes to be certain, nor is it within their power to return to the religious life.

A second doubt arises: are religious who are fugitives obligated to perform their office? Bonaventure denies this in *De Horis Canonicis*, book 1, question 11, paragraph 2, number 6, and Tamburello considers it probable; because, as they say, these are constituted in a state to which the recitation of the hours does not pertain. However, Lessius and the Council teach otherwise in *Liber Secundus*, chapter 37, paragraph 50, and in the Council documents, page 403, paragraph 15. The reason is that, just as they do not lose the religious state, so too are they not exempt from its obligations.

A third doubt arises: are religious condemned to the galleys obligated to recite the hours? Laym affirms this in chapter 4, paragraph 2, along with Navarrus, Rodriguez, Suares, Azorín, at least for the days on which they do not row, because these remain religious. However, Cabassús commonly denies this in book 1, chapter 21, paragraph 18, although he states that clerics instituted in the sacred orders are bound. But both are denied by Sporer, Lessius, Soto, Sanchéz, the Council, and Salm, along with Pellizzari, Diana Veteranorum, etc. The reason is that such recitation would seem to be a disgrace to the religious order, if in that throng of the condemned.

[*Latin ed. p. 265*]

they would demonstrate their condition, both because they do not appear to themselves to be burdened by this obligation when in such a miserable state. However, those religious who live outside the cloister with permission are bound to attend the Office, as the Council teaches in paragraph 403, number 15, with Suarez (against Bonaventure, page 2, number 4, etc., apud Busenbaum); likewise, those detained in prison, as Sporer teaches in his book, chapter 143. Here, it is necessary to add more concerning the recitation of the Divine Office by religious in choir. Note the following: 1st, that no religious or nun is obligated under pain of a serious sin to recite the Divine Office in choir, as is commonly taught by the Council, volume 2, page 377, number 4; the Anacletus, page 191, number 21; Viva, Disputationes de Officio, question 3, article 1, number 6; and Salmeron, chapter 1, number 5, with Suarez, Paleari, Bonaventure, Pellikan, Tamburrini, etc.: provided, however, that the choir is not suppressed, as Viva and others rightly point out. The small number of religious excuses the entire community from choir; therefore, unless at least four are present, there is no obligation of choir, as Wigand teaches in his book on canonical hours, page 429, number 84, reply 2; Tamburrini, Decreta, book 2, chapter 5, section 1, number 12; Holzmüller, volume 1, page 448, number 471; Roncaglia, on canonical hours, page 144, question 1; and Salmeron, number 6, with Pellikan and Bordone, etc. We have said "present"; for if they are infirm or legitimately occupied, nor even if there are four of them, are they obligated

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to attend choir. Furthermore, it is probably held by Viva, in the aforementioned passage, and by Salmeron, ibid., with Pellikan and Antoninus of Spoleto (against Wigand, page 430), that [a certain number] suffices to...

[*Latin ed. p. 266*]

It must be ensured that the choir is attended by at least the number of religious required for the Divine Office, because they are considered to be in a favorable position as religious. Here, it should be noted, in accordance with the Council, page 337, paragraph 3, that, for a just reason, it is sometimes permitted for religious to recite the hours in the sacristy. Note 2: It is gravely sinful for prelates who, through negligence, allow the omission of the recitation of the Divine Office in the choir, as commonly taught by Suarez, *de relig.*, book 4, chapter 10, paragraph 3; the Council, volume 2, page 385, paragraph 19; Salmeron, chapter 1, paragraph 14, with Paleari, Pellizzari, etc., against Borgia and others: whose opinion does not seem probable to me; because, if there is no doubt about the precept of reciting the hours in the choir, there should be no doubt about the violation of the precept if a part of the Office is omitted. Bishops are obligated to ensure that the Divine Office is performed properly and completely by the canons in the choir. Furthermore, speaking in general terms, bishops are not obligated to attend the Divine Office, even on feast days; both because this is a custom, and because they should be occupied with more important matters. Thus, Viva *de rest.*, question 7, article 9, paragraph 14, verse D. I say thirdly, with Vallet, Fillon, and Bonaventure, from *Doctor Thomae*, who in 2-2, question 91, article 2, ad 3, teaches: Prelates should not insist on singing, lest they be drawn away from greater matters. Note 3: Those who, while others are singing, are preparing or moving books, or are otherwise occupied, are not obligated to make up for any omitted parts of the Divine Office in the choir.

[*Latin ed. p. 267*]

The psalter is sung, the organ is played, or the bells are rung, or other things necessary for the choir are performed; then, by the members, what they themselves may not sufficiently provide is made up. Thus, in common with Bus., infra, n. 155; Azor., lib. 10, cap. 13, q. 2; Salm., cap. 1, n. 19; Anacl., p. 197, n. 52; Laym., cap. 5, n. 7, with Sot., Silvest., and Henr., and Croix, lib. 4, n. 1300; with Valent., Reg., Escob., and Gob., contra Pal., p. 4, n. 7; Bon., p. 2, §. 1, n. 13, with Nav., Vasq., Sa, Fill., etc., who say that these things do indeed satisfy the assistance of the choir with regard to the distribution of benefits, but are to be held to provide what is lacking, if they do not attend to those things which are being recited in the meantime. And the same opinion is held by Holzm., p. 448, n. 471; who, however, excuses this if the matter is slight, for example, if it does not pertain to the entire psalm. But the first opinion is more probable; because, while someone is occupied

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with things pertaining to the celebration of the office, the entire choir makes up for him: just as he who serves at Mass is considered to hear it while attending to a necessary preparation, as Tolet. and Rodr. say apud Laym., l.c., who notes that Sotum, Nav., Arag., and Rodr. teach the same about the one who alternately responds to the choir by playing the organ, without reciting the verse of his part. But I do not agree with this, because Bon., l.c., with Molfes, rightly teaches that the office is not then recited completely, because the organ does not utter the words.

[*Latin ed. p. 268*]

It is probable that one fulfills the obligation who, while others recite, coughs or expels air, even if an entire psalm is recited in the meantime, as Croix states, *de divinis officiis*, number 1300. Furthermore, it is probable, as stated there, that Sanch., Escob., and Diana excuse him who reads aloud in the choir, lest he err, for otherwise, he would err; this reason suffices as an excuse for that slight omission. However, Salm., chapter 1, number 17, along with Suar., Pelliz., etc., hold that a smaller portion of the office is sufficient to constitute a sin in the recitation in the choir than in private recitation. But it is probable that Bon., page 1, number 3, and Holzm., page 448, number 471, along with Tamb. and Bambest., deny this, stating that that omission is grave in the choir only to the extent that it is grave in private office. Note the fourth point: that, according to the bull of St. Pius V, all those who use the *breviarium romanum* are excused from reciting in the choir the office of the Blessed Virgin Mary, of the dead, and the penitential psalms; it is, however, prescribed therein that the custom of reciting these offices should be observed in places where it is practiced. This obligation, however, does not extend to individuals in private, but only to the community, as Conc., page 385, number 21, and Holz., page 450, number 474, along with others, rightly state. 144. "Response 3: Beneficiaries, those who have the right to the benefice and full dominion over it, if they receive or are about to receive a broken [portion of the benefice]."

[*Latin ed. p. 269*]

They are bound by hours. Lessius and Laínez, book 4, treatise 2, chapter 4, from the common decree and the Lateran Council under Leo X. The reason is because the benefice is granted for the sake of the office. Therefore, it is resolved:

1. o They are not bound before the acceptance of possession, nor if, without their fault, they do not receive any fruits, nor if they are not to receive them; Laínez, book 4, chapter 4, number 3: because they do not have the benefice according to its full effect. (This is certain. See what was said about reservations, book 3, number 664.) However, it seems that, for the sake of the fruits, they are bound to read a certain number of times. Trullian Council, same place.

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2. o He is bound who, even if (whether with or without his fault) he does not receive all his fruits, nevertheless receives such a portion as is sufficient for his sustenance. Bonaventure, *De Anima*, question 6, paragraph 3.

3. o Those are bound who, in the first or even the second year, do not receive fruits, because they are assigned to the fabric [of a cathedral church] or to a deceased predecessor: because even the dead enjoy the same privilege, and thus they satisfy the fabric for the entire life. Bonaventure, page 4, number 22; Laínez, chapter 5; Suárez, *Regin.*, etc. However, a contrary opinion is not improbable (and Salmeron calls it probable, *De Horis Canonicis*, chapter 2, number 45, with Fillon, Bonaventure, and Villalobos); and Lessius and Cajetan deny that such a person would be condemned, because he can either resign or die before that, and thus not enjoy the year. *Lig. Theol. Mor. T. VII.*

[*Latin ed. p. 270*]

Gratiæ. Laym. loc. cit., Pal., Trull. dub. 13. §. 3. » 4º. Those who hold a benefice, even a minor one, are bound to perform eight or ten hours of service; because the laws impose this obligation indiscriminately on all, just as they do on those in the higher orders. Thus, it is probable that Silv., Azor., Suar., Pal., and Bon. hold this view in d. 1. q. 4. n. 17, and the common opinion contradicts Sot., Less., Rodr., and Dian. r. 9, Malder, who say that if one holds a benefice so minor that it does not provide a certain portion of the sustenance of a cleric, he is not bound. See Dian. loc. cit., Escob. fr. 5. e. 6. c. 13, whose opinion I do not condemn. (See the aforementioned l. 3. n. 674.) See Trull. l. 1. c. 7. d. 12. §. 3, where it is noted that he who holds several minor benefices from which he derives income is bound to perform the hours. » 5º. He is not excused who, in the early years, receives little, because he spends the income on necessities; because the obligation of hours is attached to the benefice and is personal, and is accepted freely. Bon. in the aforementioned place, citing Azor., Vasq., Fill., etc. » 6º. If a son, compelled by his father to enter the ecclesiastical state, receives the fruits himself, he is bound to perform the hours; otherwise, if the father receives them; the father, however, is obligated to make restitution. Laym. c. 5. n. 2, citing Less. l. 2. c. 34. d. 3. » The same is held by Tourn. t. 1. p. 618, at the end.

[*Latin ed. p. 271*]

And the Council, volume 2, page 40: "Provided that the fear is grave; with this fear ceasing (says Tournhem), this cleric is obligated to renounce the benefice as soon as possible." However, the question arises: whether one who, through unjustly induced fear, received Holy Orders is obligated to recite the Divine Office. The Council affirms this, page 597, number 4, along with St. Antoninus, Silvestri, Leodinus, Comiti, and others; because fear does not invalidate the voluntary act. But it is more probable that

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Tournhem denies this, in volume n, number 618, along with Suarez and Henry a S. Ign., Sanchez in maiore, book 7, chapter 29, number 7, Palatinus, tractate 7, chapter 2, page 1, section 1, number 1, along with Navarreli and Salmeron, tractate 8, chapter 6, number 50, along with Bonaventure, Azorinus, Dicælius, etc. The reason is that, although fear does not invalidate the voluntary act, the Church is not reasonably considered to wish to obligate those who do not freely accept the order to bear the burden of the office. And therefore, those who are ordained through grave fear are not even obligated to observe chastity, as Salmeron states in the aforementioned passage, number 46, along with the aforementioned authors, as we have said concerning the vow, book 3, number 197, verse. But the question remains, and we will discuss it in book 6, number 811, 7th point: "It is probable that one who does not reside with legitimate license or dispensation, and therefore does not receive the fruits, is not obligated to recite the hours; because this obligation exists for the purpose of support." (Trull Council, book 1, chapter 7, number 13, section 3, from Sanchez, etc.). 8th point: "Those who have testimonials are not obligated, which are usually given to adolescents as a safeguard."

[*Latin ed. p. 272*]

Concerning studies, it is so because they are not properly called benefices. Thus, Medel, Garcia, and Lessius against Navarro, Soto, and Rodriguez. However, Laym rightly observes in chapter 5, paragraph 6, that the reason for granting testimonials must be considered: if they are granted as a perpetual title and have attached to them some spiritual obligation that cannot be fulfilled by a layperson, then they are ecclesiastical benefices, and therefore obligate to the recitation of the hours; otherwise, if they consist only of a temporal obligation. Similarly, pensioners are not obligated, since pensions are not properly called benefices, as can be seen from the preceding doubt. This is limited by Escobedo, volume 5, treatise 6, chapter 4, following Palafox, if they enjoy the pension for secular obligations; otherwise, if by a clerical title. (See note 138.) Finally, a coadjutor is not obligated if he does not administer, because the obligation binds the one who possesses the right. Palafox, Escobedo, loc. cit. Laym, chapter 5, paragraph 9. (This is common with Salmeron, chapter 2, paragraph 29.)

9th. Although one who holds several benefices may fulfill the obligation with a single recitation of the hours, he is nevertheless obligated to make as many commemorations as there are benefices or patrons of the benefices; because the reason is entirely the same. Bonaventure, Trull, loc. cit., note 27.

145. It is questioned: 1st, whether one who is obligated to recite the Divine Office by virtue of a benefice and by virtue of Holy Orders, by omitting

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it, commits two sins. Three things must be assumed here as certain.

[*Latin ed. p. 273*]

It is certain, firstly, that this person sins against religion by reason of the sacred order, for which the Church obliges him, for the sake of religion, to recite the Divine Office at certain hours. It is certain, secondly, that a beneficiary who omits the Divine Office always sins against religion, even if he does not have a sacred order, and even if he intends to restore the fruits [of the benefice], as we shall say shortly in the following question. It is certain, thirdly, that such a beneficiary, if he omits the Divine Office and does not intend to restore the fruits, will sin not only against religion, but also against justice; because, by neglecting the Divine Office, he could not acquire the fruits, as Salm. tr. 16, chapter 2, number 32, states, according to the opinion held by Soto, Suar., Azor, etc., and Croix, book 4, number 1216 (whatever others may say there). This is evident from the Lateran Council, as related in d. l. 3, number 663, where it is said: "He who does not recite the Divine Office does not enjoy the fruits [of his benefice]." But the difficulty lies in whether a beneficiary who intends to restore the fruits, sins against justice, even if he omits the Divine Office with the intention of restoring the fruits. The first opinion affirms this, and this is held by Laym. l. 4, tr. 1, chapter 4, number 5, at the end; Sanch. de matr. l. 9, d. 15, number 6, at the end; Bon. d. 1, q. 5, p. 1, number 4; and Less. l. 2, chapter 37, number 52. The reason is that, although the benefice is given primarily for the support of the beneficiary, it is given with the condition of reciting the Divine Office; for it is a moral axiom.

[*Latin ed. p. 274*]

— the benefit is conferred because of the office —; therefore, the beneficiary, by neglecting the office, sins against justice, because he does not fulfill the agreement. The second opinion, however, is more probable, as held by Pal. d. 2. p. 5. n. 3. with Henr. and Garc., Anacl. p. 192. n. 30., Holzm. p. 441. n. 457., Diana p. 2. tr. 12: r. 22. with Salas and Homob., Salm. tr. 16. c. 2. n. 32. with Salaz., Anton. a Spir. S. et Trull., which holds that the beneficiary does indeed sin against religion when the Church, by imposing upon him the burden of the office, imposes it for the sake of religion; but not against justice: for it would have to be proven that there is an agreement between the beneficiary and the founder or the Church. But this agreement is not held with respect to the founders, as rightly stated by Fill. tr. 23. n. 157. and Holzm. Lc. Otherwise (as the same Holzm. p. 443. n. 462. says, with Less. l. 2. c. 34. n. 180.) the Church could not exempt those beneficiaries who do not recite the Divine Office during the first half of the year from the obligation of restitution. Nor is there an agreement with respect to the Church; because it is neither proven by law nor by reason. Therefore, until it is established that there is such an agreement, it cannot be said that a

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beneficiary who neglects the office with the intention of restoring the fruits sins against justice. Nor does it prevent a benefit from being given because of the office; for Pal. rightly responds that the benefit is not given.

[*Latin ed. p. 275*]

From the Church, under the obligation of justice, but of religion, since the obligation of the office does not arise from a benefit, but from a precept of the Church, imposed for the sake of religion. But you will say: if there is no agreement between the Church and the beneficiary, on what basis does he sin against justice if he does not restore the fruits, as has been stated above as a certain premise? Answer: He sins against justice not because of an initial agreement, but because of a condition not fulfilled. Indeed, the Church could rightly impose an obligation of office on beneficiaries for the sake of religion, or under the condition of not using the fruits if they do not recite the Divine Office, or under a negative penalty of not acquiring the fruits if the office is omitted, according to what is stated in law 3, number 665, and as held by Viva, ibid., and Lugo, *Responsio moralis*, book 5, question 6, number 6, and Holzmüller, *De officis ecclesiasticis*, page 443, number 462, which Azor considers to be very probable, page 2, book 10, volume 14, question 7. Therefore (says Holzmüller), those beneficiaries who do not recite the Divine Office before judgment are held to restore the fruits, because although this is a penalty, it is not a positive or privative penalty, that is, one which deprives them of fruits already acquired and for which a sentence is required, but it is a negative penalty, namely, one which prevents them from acquiring fruits from those who do not recite, as if the Church were to say: "I do not grant you the fruits, unless you recite the office." (However, this is understood if the omission of the office is culpable.)

[*Latin ed. p. 276*]

It is to be omitted; otherwise, if without grave fault, as Lugo teaches in the aforementioned work, chapter 5, number 6, paragraph 2, and as we have stated in book 3, number 665, following Lessius, Sanchez, the Council, and the common opinion. Therefore, it is concluded, in answering the question, that if a priest holding a benefice omits his office, unwilling to restore the fruits, he sins against religion and against justice, since he retains what belongs to another, which he could not legitimately acquire by omitting his office; but if he omits his office wishing to restore the fruits, then he sins only against religion, but not against justice; because in that case, he does not retain what belongs to another.

Question 2: Does a holder of a benefice who omits his office sin gravely, if he has the intention of restoring the fruits of the benefice?

The affirmative must certainly be given, as Lugo states in *Responsio moralis*, book 5, doubt 6, number 2. The reason is that there are two pre-

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cepts: one ancient, by which those holding benefices are obligated to perform their office; for this was the primary purpose of the Church in establishing benefices, namely, to provide service to the Church; the other is a newer precept, that those who omit their office must restore the fruits. Therefore, even if the holder of the benefice restores the fruits, he is not released from the obligation of reciting [the Divine Office]. Therefore, he who omits his office for the first six months after receiving the benefice is not obligated to restore the fruits, but he certainly sins gravely, as declared by Saint Pius V in the *bulla* cited in book 3, number 663.

[*Latin ed. p. 277*]

ARTICLE SECOND. TO WHAT EXTENT IS THIS OBLIGATION?

146. What constitutes a culpable omission of an office or a notable part thereof.

147. What constitutes a small matter in the omission of an office.

148. Whether the omission of hours constitutes one or multiple sins.

149. How many sins are committed by one who, having been assigned an office at sea, becomes unable to recite it.

150. Whether one who doubts whether he has omitted something is obligated to recite it.

151. When those who, as beneficiaries, omit their office are obligated to restore the fruits.

152. To whom the restoration of fruits is to be applied.

153. When may a beneficiary be excused from restitution under the title of expenses incurred?

146. "RESPONSE: Firstly, it is so great that whoever, having this obligation, omits the hours or a notable part thereof, commits a mortal sin. Thus, generally, all [agree], contrary to Anglerius and Richard, who say that it is not mortal unless one has a custom of omitting [them]: which opinion Lessius does not dare to say is probable, because it is contrary to the consensus of the doctors. The reason is because it violates a precept in a grave matter pertaining to the virtue of religion. And this is certainly to be held in accordance with the common opinion. See Salmeron, *De Horis Canonicis*, chapter 2, number 3. However, it is truer to say that this obligation arises more from received custom than from positive law. Thus..."

[*Latin ed. p. 278*]

(Salm., in loco citato, cum Less., Pal., Suar., etc.) Ex dictis solvuntur hi casus: "147. "1. Non est mortale ommittere unum psalmum, lectionem vel quid simile, ut habet communis contra Nav.; nec tertiam partem parvæ horæ, contra Azor. et Mald.; quia non censetur pars notabilis. Talem autem

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dicit Pal. l. i. p. 5. esse in matutino quod est æquale uni parvæ horæ. Sanch. in sum., tom. i. l. i. c. 18. n. 8. dicit tres lectiones cum responsoriis in feriali officio esse materiam parvam. In parvis horis dicit Fern., Fill. et Laym. dimidium esse notabilem quantitatem. V. Escob. l. c. c. 13. n. 107., ubi docet unam parvam horam non esse partem notabilem respectu totius officii, quod per modum unius est præceptum. Verum hoc merito rejicitur ab aliis." "2. Est mortale, si omittas vel unam integram ex horis, quæ sunt septem, matutinum cum laudibus, prima, tertia, sexta, nona, vesperæ et completorium; vel dimidiam etiam ex brevioribus, ut docent Fern., Regin., Suar., Laym., contra Bon. et Less.; vel ex matutino g. lectiones cum responsoriis, ut Sanch. i. mor. c. 18., aut partem æquivalentem horæ uni minimæ, ut Suar. de rel. tom. 2. l. 5. c. 25. et Gavant., vel, ut alii, unum nocturnum. V. Bon. dub. i. q. i. p. 1., Dian. p. 2. t. 12. r. 26. et 4. r."

[*Latin ed. p. 279*]

Question: What is the minimum amount of matter involved in the omission of an office? Azor., Nav., Vill. etc., apud Conc. t. 2, page 447, n. 4, hold that those who omit half, or, as others say, a third part of even a small hour, sin mortally; because such a portion, with respect to that hour, is already a considerable matter. But it is more probable that this is denied by Less. l. 2, c. 37, n. 52, Bon. d. 1, q. 5, p. 1, n. 2, Cont. Tourn. t. 1, p. 645, v. Dico 2, with Suar., Pontas, Van-roy, also Pal., Garc., Trull., Pell., Led. etc., apud Conc. l. c. The reason is that, although that portion is considerable with respect to a small hour, it is nevertheless slight in itself and with respect to the entire office; therefore, with regard to the gravity of the matter, the quantity of the entire office must be considered, and not that of any particular hour. It is indeed true that the precept of the office is not composed of seven hours of recitation, but rather a single precept commanding a single office consisting of seven parts, as is evident from c. Dolentes, de celebr. miss., where the office is commanded to be recited under one precept with these words: "We command, in virtue of obedience, that the divine office, both nocturnal and diurnal, be diligently and devoutly celebrated as much as God has given them." Furthermore, Pal. d. 2, p. 5, n. 1, Bon. d. 1, q. 5, p. 1, n. 6, Ronc. q. 5, r. 2, p. 154, Spor. t. 3, page 73, n. 94, Tamb. c. 5, §. 2, n. 11, Elb. t. 2, p. 547, n. 367, Holzm. t. 1, p. 442.

[*Latin ed. p. 280*]

n. 455., Salm. c. 3. n. 23. cum Trull., Pell., Leand. etc., Croix lib. 4. n. 1220. cum Laym. et Fill. assert, it is probable that omitting a small amount of time, less than a single hour, is a venial sin. Thus also Elb. l. c. and Croix n. 1204. cum March., Pell., Tamb. et aliis, because of the smallness of the matter, assert that it is not a grave sin for one to omit the entire Vespers service on a holy Sabbath. Furthermore, as rightly state Bus. as above and Mazz. (contra Sot., Escob., Philib. etc. apud Sal. n. 22.), it is improbable that

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a single, small hour, such as the third, sixth, etc., constitutes a grave matter. It is also to be held that it is a grave sin to omit an entire nocturn, as rightly judge Wig. p. 423., Holzm. p. 441. n. 455., Elb. p. 539. n. 397., Croix l. 4. n. 1202. et Conc. p. 468. n. 5. cum communi, contra Leand., Vercell. etc. apud Conc., who believes that it is also a grave matter to omit three readings with their responses; but it is probable that Sanch. l. 1. dec. c. 10. n. 7. et Diana p. 2. tr. 12. r. 41. contradict this. Understand, if the readings with their responses are such that they do not take up a small amount of time. Therefore, rightly conclude Sanch. dub. 11. n. 2., Pal. p. 5. n. 2., Less. c. 37. n. 57., Bon. p. 1. n. 2. et Salm. d. n. 23. cum Trull., Pell. etc. that it should universally be considered a small matter.

[*Latin ed. p. 281*]

The matter which does not pertain to the quantity of a complete hour. Indeed, Salm. there, admit that in a longer office, such as that of the Sunday, a greater matter can be considered light. But I do not agree with this, for in this way, even the omission of a small hour with respect to the entire Sunday office could be said to be a small matter; which is scarcely admissible, since even a small hour, from the common understanding of the Doctors, seems to be absolutely grave matter with respect to any office. Moreover, Holzm. and Croix rightly add that it should be considered a grave omission if something too insignificant were said about a small hour. 148. » 3.º Whether the omission of hours (abstracting from the multiplication of acts of the will) is one sin in number, as Bon. wishes, or whether they are several formally, as Less. teaches, or whether they are one multiplied, as Suar. says, or whether they are one equivalent to several, as Fill. says, it is nevertheless probable that in confession, the number of hours omitted should be explained, because it is a circumstance that pertains to the object and constitutes the act in its individual nature. Bon. L. c. n. 9., Less., Suar., Fill. » Here, therefore, the question arises: how many sins does he commit who omits the entire office? Some say that he commits seven sins; because for each hour there is a different precept; and Salm. chapter 3, number 22, considers this opinion probable. But it is truer to say that he commits only one.

[*Latin ed. p. 282*]

To commit a sin. Thus, commonly, Less. c. 37, n. 53; Sanch. c. 2, dub. 12, n. 2; Pal. d. 2, p. 5, n. 1; Bon. q. 5, p. 1, n. 8; Ronc. p. 154, q. 5, r. 3; Tourn. tom. 1, p. 646; Conc. p. 485, n. 18; Elb. p. 540, n. 398. Likewise, St. Antoninus expressly teaches this in 3. p. iii, 13, c. 4, where he assigns the true reason for this, saying that he who omits all the hours of one day does not, for that reason, commit seven mortal sins, but one, and that much more gravely, according to the amount of duty omitted; because the entire duty of one day falls under one precept. However, Elb. l. c. rightly observes that if someone

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were to omit several hours due to morally justifiable interruptions, then he would commit more sins. 149. Question 2: How many sins does he commit who, being rendered incapable of reciting [the Divine Office] by being at sea? This question depends on another: whether the voluntary omission in a given circumstance is in itself a sin. In that question, the first opinion denies this, and this opinion is held by Laym. tr. 2, c. 3, n. 57; Azor. i. 1, l. 4, c. 3, q. 4, p. 4; also, apud Salm. tr. 20, de pecc. c. 10, n. 25; St. Bonaventure, Pal., Vasquez, Fill., Covarrubias, Sayr, Granado, etc. The reason is that such an omission, when it occurs, is not voluntary in itself, but in the cause; therefore, the sin is only in the cause. Hence, according to this opinion, he commits only one sin, namely...

[*Latin ed. p. 283*]

When he throws the breviary. However, a second, more accurate opinion affirms this, and it is held by St. Thomas [Summa Theologica] 1-2, question 76, article 3, ad 3, and question 77, article 7, and 2-2, question 150, article 4, where he says: "But if the preceding act was culpable, then someone is not entirely excused from the subsequent sin, which, indeed, is rendered voluntary by the will of the preceding act, insofar as someone who engages in an illicit act falls into the subsequent sin." And these are followed by Cajetan [Commentaria in Summam Theologicam] ibid., Navar [Manuale ad Pacem], chapter 16, paragraph 8, Sanchez [De Matrimonio], book 9, chapter 45, paragraph 27, Palatinus [Tractatus de Justificatione], 2, chapter 1, page 3, paragraph 6, and Salmeron [Commentaria in Epistolam Pauli ad Romanos], number 26, along with Abulafia, Soto, Medina, Lopes, Villalobos, and others. The reason is that, although a voluntary act is required for a sinful omission, a voluntary act is sufficient in the cause, as is evident from the decree *Mulieres*, concerning excommunication, where it is said that if someone voluntarily becomes intoxicated, foreseeing that he will kill the cleric, he incurs excommunication, following the killing. Therefore, that killing is truly a sin; otherwise, the killer could not incur excommunication for an external sin. Therefore, with regard to our case, it is answered that the one who throws the breviary commits as many sins as there are omissions that he foresees, unless he repents of the first sin; otherwise, he perseveres in the voluntary act that is the cause. Thus, Sanchez [Consilia], book 7, chapter 2, doubt 15, Tournhem [Opera], volume 1, page 657, and Elburg [Tractatus de Peccatis Mortalis], page 556, number 42, along with the common opinion. See also [Decretales] book 5, number 49.

[*Latin ed. p. 284*]

150. Question 3: Whether one is obligated to repeat something if one doubts that they have omitted something from their duty. Answer: Those who are scrupulous are not obligated to repeat; because in these cases, most doubts are not true doubts, but empty apprehensions. However, a

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distinction must be made for others: if the doubt is merely negative, they are certainly obligated to repeat, because in doubt, possession stands for the precept; thus, Pal. d. 2. p. 6. n. 1., Salm. c. 3. n. 12, and others commonly state: but if the doubt is positive, so that it is probable that one has said something, one is not obligated to repeat, as is commonly taught by Pal. in the aforementioned place, Sanch. cons. l. 7. c. 2. dub. 34. n. 3., Tourn. t. 1. n. 645, and Salm. dict. n. 12, with Pelliz., Trull., Diana, etc., as well as Laym., Lugo, Ronc., and Viva. Furthermore, Croix states in book 4, n. 1255, with Sanch. in the aforementioned place, Laym., and Ills., that it is wrong for one who has a suspicion that they have said something, to repeat it; because it opens the way to scruples, and Nav. teaches (in Conc. tom. 2. page 463. n. 12), saying: "Not only is one not obligated to repeat what one probably believes they have said, but it would also be wrong to do so, because it would create superfluous scruples for oneself." Therefore, Sanch. in the aforementioned place, with Nav., Major., and Angl., Croix d. n. 1255, with Azor., Suar., Fill., Bon., Tamb., and Salm. in the aforementioned place, with Angl., Trull., and Pell., teach that it is good.

[*Latin ed. p. 285*]

You are excused from repeating [the prayers], if you do not remember having said something, and you have a just reason to believe that you did say it; for example, (as Sanchez and others cited by him, and Salm. tr. 29, ch. 7, n. 7, with Nav., Suar., Bard., etc., say) if you remember having begun a psalm, a reading, or a prayer, and afterwards, not having been distracted or interrupted by any work, you find yourself at the end of the hour, reading or reciting mentally those things in which you do not usually err; and they say that this applies, as do Gobinus and Tampere, apud Croix, n. 1235, even if you have a probable reason for the omission; because the presumption that you complete what you begin, makes it so that you are not required to repeat anything, unless you are morally certain that you did not say it. However, Salm. dict. n. 7, says that if you often experience such doubt, you are not required to repeat [the prayers]; because then it is easily presumed that such doubt arises from scruples; otherwise, if it is rare. Furthermore, Croix, d. n. 1255, with Nav., Suar., Azor., Bon., etc., rightly says that if you do not usually say the later hour unless after the earlier, you can prudently believe that you have omitted nothing. 151. » Resp. 2. o The obligation is so great that it imposes on him the burden of restitution of the fruits in proportion to the omission of the office, for the one who is bound by title of benefit to the hours, if six months have passed after obtaining possession (for he, even though gravely...

[*Latin ed. p. 286*]

He sins by omission, but is not nevertheless bound to restitution if he culpably fails to perform his office. This is clear from the Council of the

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Lateran Palace under Leo X. But because there was doubt as to whether this council was accepted, Pope Pius V issued a bull, which is found in Navarret, chapter 25, by which he confirms and declares this decree: that he who omits the entire office for one day, is bound to restore all the fruits corresponding to that day; for example, he who receives annually 365 florins, is bound to restore one florin for one day; he who omits only the Matins, half of the fruits of one day; he who omits the remaining hours, also half; he who omits only one of these, one-sixth. And this restitution is to be made to the fabric [of the church] or to the poor. Laym., Fill., Bon., d. 1, q. 5, p. 2, etc.; against de la Crux and Lopez, apud Dian, p. 2, 1, 12, res. 54, who say that if a beneficiary omits only for 8 or 10 days within a year, he is not bound to restitution, because he is a servant of the most liberal Lord, who pays much less attention to a few things than temporal lords. (See the words in book 3, n. 663.)

1.º Clerics of the higher orders, who are bound to the hours solely by the title of their order and by any other title than that of a benefice, are not bound to this restitution; because they receive no fruits in consideration of the burden of reciting the office. Bon., loc. cit., p. 2, n. 3.

[*Latin ed. p. 287*]

2. Neither are those obligated who, through natural forgetfulness, a just impediment, good faith, invincible ignorance, or otherwise without fault, have omitted [the tithe]. The reason is that punishment is not due in conscience where there is no fault. Less., Suar., Bon. n. 5. (Thus also Viva cum Sanch. V. l. 3. n. 665.)

3. It is very probable that those who have other obligations besides those of prayer, for example, pastors, bishops, etc., who omit [the tithe], may retain a larger portion of the fruits of that day because of said obligations, and that it suffices to give a third or a fourth part of the fruits; because they are only obligated to restore the fruits corresponding to the burden of divine office. Nav., Fill., Bon. p. 3., Dian. p. 2. t. 12. res. 8, citing many others. (Thus also Croix probably holds, lib. 4. n. 1214, with Sanch. and Gob. V. dicta l. 3. n. 673, vers. Quær. 10.)

4. If such a pastor has meager revenues for his support, he seems not to be obligated [to restore]; since support is due to him because of other obligations. Laym. l. 4. tr. 2. c. 5. Indeed, Dian. p. 2. tract. 12. res. 9., Mald. tr. 10. c. 2. dub. 3, say that he who has a very meager benefice, for example, whose revenues do not equal a third part of a moderate support, is not held, because of some hours neglected, to restore [the tithe]. (And this is probable with Less.)

[*Latin ed. p. 288*]

(Sanch., Pell., Red., Rodr. V. dicta lib. 3. n. 674.) » 152. » 5.º Haec restitutio potest fieri vel pauperibus amicis, vel aliis, vel ipsi etiam beneficiario, si

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pauper est. Item, potest impendi in fabricam domus vel meliorandos agros beneficii; quia haec, nomine fabricae, etiam intelliguntur apud Suar. et Bon. (V. dicta d. l. 3. n. 672.) Denique, aliquando compensari potest, offerendo suffragia pro defunctis, aliisque precibus, ut Bon. loc. cit. p. 4. (Idem dicunt Salm. tr. 16. c. 2. n. 60. Sed vide dicta l. 3. n. 667. et 672., ubi huic non acquievimus.): et sic etiam per alium, seu per officium aut preces ab alio ad tuam intentionem recitatas et a te defunctis applicatas, satisfieri posse docet Quintan. t. 8. sect. 6.; nec continuo damnandum qui ordinarie recitare solitus semel, vel bis in anno, omisit, etsi nihil restituat, docent Sot., Med., Fill. c. 10. n. 316. et 317. (Sed hoc non videtur posse sustineri, ut merito dicunt Salm. d. c. 2. n. 55. cum S. Pius in sua bulla dicat: Ut qui omnes horas uno vel pluribus diebus intermiserit.) » 6.º Qui pecuniam quam ob neglectas horas tenetur restituere sive erogare in usus pios, impendit in alios, quam vel in pauperes vel fabricam beneficii, non satisfacit (secundum jus commune, ubi concilium...

[*Latin ed. p. 289*]

lateranense, or the bull of Pius V, is accepted as fulfilling the obligation; unless otherwise stipulated by custom or a law received in a particular place: because it is expressly prescribed to be given back to the poor or to the fabric of the benefice. V. Bon. q. 2. p. 2 and 4, and the aforementioned book, 3, n. 672. ″153. ″7. It is possible that a beneficiary may sometimes be excused from restitution for neglected hours, due to expenses incurred for the title of the benefice; understand this after the omission of the hours (for if before the omission, he is not excused; as is stated in prop. 33 by Alexander VII, saying: ″The fruits due to the omission of hours can be made up by any alms which the beneficiary previously made from the fruits of his benefice.″) Although not with this intention, in giving to the poor or to other pious uses, it is considered by Dian. p. 3. r. 57, from Laym. l. 3. s. 3. t. 2. c. 12. n. 9, to be probable, firstly that some Doctors hold this opinion, secondly that it seems to be the virtual intention of all who give alms to satisfy through them all the obligations which they have incurred through their sins, and thirdly that ecclesiastical laws ought to be interpreted benignly. (And it is probable, according to the opinion held by Sanch. cons. lib. 2. c. 5. dub. 121, Lugo d. 4. n. 46, Laym. l. 2. tr. 2. c. 12. n. 9, Salm. c. 2. n. 63, with Pelliz. and Croix lib. 4. n. 1215, with Suar., Gob. and others. V. the aforementioned book, 3, n. 700. v. Limitant.) Salas adds, concerning the law.

[*Latin ed. p. 290*]

d. 15. session, 2. n. 27., Vasquez: si un canónigo obtuviera verdaderamente y absolutamente un beneficio sustancial o corporal de su canonicado antes de omitir el oficio, no estaría obligado a la restitución por la omisión subsiguiente, porque la pena no es que restituya los beneficios que ya ha

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obtenido, sino que no obtenga beneficios. Así, en Dios, p. 2, t. 12, r. 8, como se verá en el artículo 4, § 6, al final. » 8.° Donde la bula de Pío V. no es aceptada, puede parecer probable que el beneficiario no esté obligado a dicha restitución, como dice Silvestro de Clericus.

ARTÍCULO TERCERO. DE LO QUE EXCUSA DE LA RECITACIÓN DE LAS HORAS.

154. ¿Cómo excusa la enfermedad?

Nota 1.° ¿Excusa una grave molestia?

Nota 2.° ¿Excusa la convalecencia?

Nota 3.° ¿Qué ocurre en caso de duda si la enfermedad es suficiente para la excusa?

Nota 4.° ¿Qué ocurre si dudas si puedes recitar una parte?

155. ¿Se excusan aquellos que sufren fiebre terciana o cuártica?

156. ¿Cómo excusa un justo impedimento? Y, ¿se excusan por esta razón los concionadores, confesores, aquellos que realizan tareas necesarias en el coro? (Véase lo dicho en n. 143, véase Nota 3.)

157. ¿Cómo excusa la ceguera y la falta del breviario?

158. ¿Está obligado el impotente a recitar todo el oficio, o solo una parte? ¿Qué ocurre si no tienes el oficio propio? ¿Estás obligado a recitar con un compañero, si no puedes solo? ¿Está obligado el beneficiario a proporcionar un compañero, si no puede recitar solo?

159. ¿Cómo excusa la dispensa?

[*Latin ed. p. 291*]

154. » R ESP. The following applies. 1. A grave infirmity, for example, a notable headache, such that one cannot recite the Divine Office without discomfort or an increase of the illness. I said "grave" because a slight pain, for example, a stomach ache or chest pain, or even sometimes a tertian or quartan fever, does not excuse, since it afflicts the whole day (or a greater part of the day), as stated by Sanch., Trull., Tamb., Pell., etc., with Salm. *de hor. can.*, c. 3, n. 35. Thus, Nav., Fill., Laym., Bon. *d. 1. q. 6. p. 1*. Furthermore, one is not entirely excused, as some hold, to hear another reading or to substitute for another (nor other prayers; this is common in Salm. *ib. n. 33*), as stated by Fill. and Sa, *v. Horæ*. However, if it can be done conveniently and is customary to read with a companion, one is obligated, as stated by Less. and Bon. *v. Dian. p. 2. t. 12. r. 43* (This is more truly held with Sanch., Ronc., Spor., Croix, etc., contrary to others. See below, n. 158, *vers. Item*). » There are several things to note here that are necessary for understanding. It should be noted that 1. o, one is excused from the office not only by a serious illness, but also by those who cannot recite it except with great discomfort or with a probable danger of such

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discomfort. Therefore, those who prudently believe or fear that reciting the Divine Office might cause them a notable headache or a stomach upset are sufficiently excused.

[*Latin ed. p. 292*]

either from the weariness of strength, or if they believe that the fever is to be remitted more slowly. Thus, Sanch., chapter 2, question 45, number 4; Holzm., volume 1, page 450, number 477; Anacl., concerning the canonical hours, number 77; Council, volume 2, page 507, number 23; and Salm., chapter 3, number 35, with Trull. and Pell., from chapter *Clericus*, 2, district 91, where it is said that inequality of the body excuses from office, which does not signify a grave illness, as Croix rightly observes, book 4, number 1224. And this is probably admitted, even if the sick person were to read a book for a considerable part of the day to comfort his soul, as they say, Sanch., in the place cited, number 4; Holzm., page 450, number 477; Spor., number 158; Elb., page 564, number 462; and Salm., in the place cited, at the end, with Trull., Pell., Dian., etc. The reason is that, although this person might be able to read a book of recreation, it does not follow that he can and is obliged to recite the office, for which greater attention is required, which presents a greater difficulty. Note 2: that not only the actively ill, but also those recovering from a serious illness, are excused from office for several days at the discretion of a prudent person, until their strength is restored. Thus, commonly, Tourn., volume 1, page 654, question 1; Council, page 497, number 5; Elb., page 564, number 461; and other authors cited above. And this is to be admitted, even if these persons were to celebrate Mass, as Salm., in the place cited, number 35, with others. Note 3: that in doubt as to whether an infirmity...

[*Latin ed. p. 293*]

It suffices, or even for the purpose of obtaining an excuse, that one may submit to the judgment of a physician, as stated in the chapter on Fraternity, concerning illness and infirmity, or acquiesce to the judgment of a superior, who, in such a doubt, can also grant a dispensation; or finally, one may submit to the judgment of a prudent and upright man. Thus, Soto, Silv., Sanch., Tamb., etc., with Salm., chapter 3, paragraph 36. And one may also adhere to one's own judgment, if such a judgment can be prudently rendered by oneself, as Gobius probably states in *ad Croix*, paragraph 1225. But what if, after these considerations, doubt still persists? Answer: If the doubt is that recitation would gravely harm [one's health], then certainly one is not obligated, indeed, one cannot recite; because the natural law of preserving one's health is to be preferred to the precept of the Church, as Viva de Iurisprudentia, part 3, question 3, article 6, paragraph 3, and Salm., chapter 3, paragraph 36, with others, state. Unless one were to do so out of love for virtue, having excluded the danger of death, according

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to the aforementioned, part 3, paragraph 571, with Lugo, Salm., Vill., etc. But if the doubt is only whether the indisposition reaches the point of excusing one, as mentioned above, then, since the law of recitation holds, and there is doubt about the exemption, the law must certainly be followed. However, this applies only when there is a pure doubt; otherwise, if there is a probable judgment, then [the law should be followed]. Thus, Contin., Tourn., page 654; Ronc., chapter 6, question 2; Elbel, volume 2, page 556, paragraph 433; Anacl., paragraph 77; Holzm., page 451, paragraph 480; Viva, *loc. cit.*, and Liguri, *Theologia Moralis*, Volume VII.

[*Latin ed. p. 294*]

Psalm, number 36, with Sanctius, Pellican, Trullius, and Diana. Note the following: If someone, because of his infirmity, is certain that he cannot recite the entire Office, and he doubts whether he can recite a portion, he is probably not obligated to do so, as Layman teaches in book 4, title 1, chapter 6, number 2; Sanctius, chapter 2, doubt 47, number 4, with Navarrus; Viva, in propositions 54; Innocent IX, number 16; Roncaglia, chapter 6, question 2; also Suarez, Sanctius, Cardona, and others, apud Croix, number 1223. For it is reasonable that this person should be excused from the entire Office, lest he be greatly troubled by scruples, not knowing how much he can or is obligated to recite; for this anxiety would bring him great discomfort; especially if, from reciting, he truly believed that he would contract a severe headache, exhaustion of his strength, or a slower remission of fever.

155. Question: Are those who suffer from a tertian or quartan fever excused from the Office? Leander absolutely excuses them; but it is truer to say, as Sporer teaches in volume 3, page 84, number 195, and the Council in volume 2, page 496, numbers 2 and 4, with Navarrus, Azorinus, Bona, and Trullius, that the circumstances must be considered in this matter; for when the sick person could recite without great discomfort on days when he is free from his infirmity, it does not appear that there is a reason why he should be excused. However, are such sick persons obligated to anticipate or postpone the hours? Canus denies this in his lectures on penance, page 5, doubt 31.

[*Latin ed. p. 295*]

And Hemmerius and others, apud Salm. c. 3, n. 49, consider this probable; Sanchez, dub. 55, n. 6, also thinks so; Lessius, c. 37, n. 43; and Viva, q. 3, a. 6, n. 4. The reason is, firstly, because every hour corresponds to its proper time, and the obligation does not extend beyond that time; secondly, because anticipation or postponement is a privilege of favor, by which no one is bound. However, they affirm that Concinius, p. 502, n. 10; Tournhem, p. 665; Lessius, in loco; Croix, lib. 4, n. 1226; and Roncaglia, p. 157, q. 3, hold a different view. Furthermore, Salm, c. 3, n. 50, with Trullius, Sanchez, Azorín, Villalobos, and Pellicio, argue that the office is prescribed to be re-

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cited within the scope of the entire day; therefore, when the precept already applies, the sick person is bound to fulfill it at the time when he can: just as, if on a feast day you cannot attend Mass around midday, you are bound to anticipate. Busenius rightly assigns this rule in *de leg.*, dub. 2, n. 6, p. 65, stating that when someone is hindered while the force of the precept remains, he is bound to anticipate. Therefore, Salm, in loco, rightly calls the contrary opinion lax. However, it is very probable, as Holzmüller, p. 451, n. 478, states. This is confirmed by Sporer, t. 3, p. 86, n. 172, and Elbing, p. 457, n. 444, that he who cannot recite Matins on the following day is not bound to anticipate it on the preceding day; for then the obligation to anticipate the office arises only when the obligation of the precept has already begun: but if Matins can be said...

[*Latin ed. p. 296*]

The preceding day is not required by command, but by a privilege introduced by custom, to which no one is bound to adhere. 156. "2. A just impediment; for example, fear of betrayal among heretics. Also, a serious or sudden occupation, or a work of charity of greater importance than the hour, which cannot be omitted without causing scandal or serious inconvenience to oneself or another. Although confessors or preachers may sometimes be excused, and this from the benign intention of the Church, as taught by Silv., Suar., and Laym., etc.: nevertheless, they are bound to anticipate, if they can; for example, if in the morning you foresee that you will be occupied all day with confessions that cannot be postponed. Thus, according to Suar. and Azor., Bon. loc. cit. p. 2, n. 1 and 2, etc., in general. Those who are occupied all day in the duties of religion or charity which cannot be omitted without scandal or great detriment to oneself or another are excused from the hour; thus, commonly, Salm. c. 3, n. 37, Ronc. c. 6, q. 3, Elb. t. 2, p. 557, n. 444, Wig. p. 432, n. 96, Holzm. t. 1, p. 450, n. 477, and Spor. t. 3, p. 85, n. 161, with Silv., Nav., Tolet., etc. Hence, preachers are excused if they cannot omit the sermon without scandal or notoriety, as Laym. l. 4, tr. 1, c. 6, n. 1, Salm. n. 37, Viva q. 3, art. 6, n. 6, and Wig. loc. cit. state. Also..."

[*Latin ed. p. 297*]

Confessors are excused who hear confessions throughout the entire day, which they cannot postpone, as stated in the Council, tome 2, page 500, number 5; also, Layman, Wigand, and Salmerius, in their respective works. Also excused are those occupied with settling legal disputes or attending to the sick, as stated by Sanchez, in his Doubts, number 52; and by Roncaglia, in his Decrees, question 2. Also excused are those who are obligated by their office to attend public offices, as stated by Sanchez, Salmerius, and Roncaglia. Also excused are those who have a public lecture to give, or who are striving to obtain a chair or a laurel, if the occupation lasts the entire day and cannot be postponed without causing harm to themselves or others,

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as stated by Wigand, in his work, and by the Council, page 498, number 2, with Suarez. Also excused are students who are required to defend a thesis on a particular day, as stated by Sanchez, in his Doubts, number 52. Furthermore, regarding this matter, attention should be paid to proposition 21, condemned by Alexander VII, which stated: "One who holds a benefice or any other ecclesiastical office, if he is free to study, fulfills his obligation if another recites the office for him." However, Layman, chapter 6, number 1, Roncaglia, and Wigand, in their respective works, rightly state that if all these individuals can, without great difficulty, anticipate or postpone the recitation, they are certainly obligated to do so; therefore, Wigand rightly concludes that it rarely happens that such individuals can omit their duty without guilt. From this chapter, some also say that one is not obligated to repeat what he has neglected (neither by reciting nor by hearing) while engaged in incense burning during the Magnificat, or the Benedictus, or while reading books.

[*Latin ed. p. 298*]

You have been occupied, either by being necessarily engaged in carrying out duties, or by anticipating the imminent singing of the Divine Office, or by performing other tasks necessary within the choir; for the entire choir appears to supplement the one who is occupied with matters pertaining to the celebration of the Office, and it recites or sings, not only on its own behalf, but also on behalf of the other ministers. Thus, Laym., lib. 4, tr. i, c. 5, n. 7, and Henr., Silv., Azor., Sot., Moltif., Nald., Arag., Regin., cited by Dian., p. 2, t. 12, res. 3. Regarding the one who sings with the choir, responding to the organ or alternating verses, Nav., Sanc., Arag., and Rodr. state, apud Laym., l. c., that he is not obligated to also pronounce the words aloud; but Escob. t. 5, e. 6, negates this. Trull. d. 15. (See the statements regarding this in n. 143, verse. Note 3.) » 157. » 3.º Blindness: Bon. p. 1, n. 4, etc., generally. » 4.º Lack of a breviary. This is considered a fault. However, if you can recite either the entire Office or one hour from memory, it is excused. If, however, you only know the Psalms or the readings or chapters, Fill. t. 2, tr. 23, c. 9, n. 187, Nav. and Suar., also Escob. t. 5, e. 6, a. 149, state that it is probable that this is not excused; because, as such, the Psalms are not the canonical hour to which a cleric is bound. The same is stated by Garc. de benef. t. 1, part. 12, c. 1, n. 221, Mald. in 2. 2, t. 10, c. 2, d. 5, and Jo. Sanc. in select. d. 15, n. 1.

[*Latin ed. p. 299*]

These [lessons and chapters] are cited by Dian., because they are a part, albeit a smaller one, of the most principal [office], so that without them, the canonical office is not complete. The same is conceded by Sanch. in book 2, chapter 19, concerning the morning office of a double or semi-double feast. See Bon. p. 2, n. 6; Dian. part 2, tract. 12, resp. 30 and 43. However, I do not

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dare to prove this; but rather, what Bon. teaches in d. 1, art. 6, part 2, that if someone can recite a notable part [of the office], he is bound to do so for that reason; otherwise, he is bound to nothing. Finally, if someone lacks the breviary with which he is accustomed to use, for example, the *romano*, he is bound to recite another that he may have; because by either, the substance of the precept is fulfilled. Creus., Escob., Dian. p. 9, t. 9, r. 25, n. 158. Hence, first, it is necessary to consider proposition 54, condemned by Innocent XI, which stated: He who cannot recite the morning office and the lauds, can, however, recite the other hours; he is not bound to recite anything, because the greater part draws the lesser part to itself. Therefore, it is certain that he who lacks a breviary and knows nothing by heart, except the lauds or the completion [of the office], is bound to recite that which he knows, as some commonly teach, for example, Spor. t. 3, p. 87, n. 177; Pal. p. 6, n. 11, with Nav., Suar., Valent., etc.; Wig. p. 431, n. 90; and Croix, l. 4, n. 1230, with Sanch., Bon., and Card. Therefore, he is bound to recite the part which he knows by heart, but he is not bound to commit to memory that which he does not know; Conc. p. 494, n. 6.

[*Latin ed. p. 300*]

They say, however, in the Palatine Decrees, book 6, number 7, along with Torre and Sanctio, and Fill., Garc., Tamb., etc., apud Sporus, that if one has the Psalms, but not the readings for Matins, one is not obligated to recite anything; because then the prescribed form, established by Saint Pius V, is lacking. However, Bus, as mentioned above, does not approve of this, and Sporus, in book 1, number 177, states that, in practice, the opposite opinion should be embraced, as held by Croix, number 1220, and by Bon, Gobinus, and Leander, apud Sporus. The reason is that, since one can recite a notable part of the Office, there is no reason to excuse oneself from doing so. Therefore, Bus, along with Bon, Holzmüller, page 451, number 45g, along with Illes and Croix, in the aforementioned place, and with Laym and Fill, correctly state this rule: if one can recite as much as is possible within the allotted hour, one is obligated to recite it; but if less, one is not obligated to recite even a small portion; because such a small portion, taken separately, is not considered valuable for the purpose intended by the law. Furthermore, if one has the Common Office and not the proper Office for that day, one is obligated to recite from the Common Office, as Croix more truly states in book 4, number 1221, along with Sporus and Gobinus, against some. The same is held by Concina, page 8g, number 3, and Wigand, page 430, number 88: if one lacks the Breviary of *roma* and has another, such as the Benedictine or a similar one, one is obligated to recite from it. The reason is that there are two precepts regarding the Office:

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one universal, concerning the hours to be fulfilled, and the other...

[*Latin ed. p. 301*]

The prescribed formula for any particular day must be observed; therefore, if you are unable to observe one, you should adhere to another. However, Psalm 1, verse 28, is cited to the contrary, stating that one is not bound to do so, because (as they argue) the precept of the Office is indivisible, that is, it involves both reciting and reciting under a specific formula; and this is inferred from the words of the Bull of St. Pius V, where it is stated that one can only fulfill the requirement "by this very formula." Nevertheless, despite this, the first opinion, as being more pious and reasonable, seems to me to be the one to follow. It is certain that a bishop who has become a religious can properly use the breviary of his diocese. Council, page 392, paragraph 9. Furthermore, he who is unable to recite alone is bound to use a free companion if he can, without great inconvenience, as is the opinion of many, including Bus., as above, paragraph 154; Sanch., chapter 2, doubt 48; Ronc., chapter 6, question 4; Holzm., page 451, paragraph 478; Spor., paragraph 181; Croix, book 4, paragraph 1231, with Bon. and Suar.; Salm., chapter 3, paragraph 44; Council, volume 2, page 493, paragraph 5, with Nav., Azor., Less., Pal., Laym., Valent., etc. (against Leand., Sanch., Dian., etc., in the same Council). The reason is that any precept must be fulfilled that can be fulfilled by ordinary means. We have said "free" because one is not bound to use a companion for whom a salary is paid, as say Salm., chapter 3, paragraph 42, and Bon., page 2, paragraph 8, with Suar., Nav., Villal., etc. Whether, however, a beneficiary is bound to use a companion...

[*Latin ed. p. 302*]

It is deduced from the fruits of a benefice, that one ought to appoint a deputy, as Bonaventure affirms in *de iis qui legem observant*, question 6, paragraph 2, number 7, as also Suarez, Layman, Molinos, etc., in *Controversae Tournenses*, volume 1, page 655; Holzbauer, page 451, number 478; Paleari, page 6, number 14, and Sporer agrees in volume 3, page 88, number 183, if the benefice is substantial. The reason is that the fruits of a benefice are given because of the office; therefore, the holder of the benefice ought to expend them in order to fulfill the office. However, Gobinus, Tamburrini, and others, including those mentioned by Sporer, object to this, and he considers this objection to be worthy of consideration. The reason is that, as we have said in book 3, number 665, with Lessius, Innocentius, Panormitanus, Silvestrinus, Paludanus, etc., the obligation of the canonical hours is not based on natural law or justice, but on the positive law of the Church, which prescribes it for the sake of religion (as we have said above, number 145, verse 1), and the fruits of the benefice are not given as payment for reciting the prayers, but for the support of the holder of the benefice. Therefore, he is not obligated to fulfill the office by extraordinary means,

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such as appointing a deputy; much less, because the Lateran Council (as you can see in number 665) absolutely excuses those legitimately hindered from the burden of the office. Both opinions are probable; hence, I say that if such a holder of a benefice has neglected the office, and has not appointed a deputy, and has received the fruits in good faith, he may retain them, because the condition of the possessor is preferable. Otherwise, if he has not yet received them, but...

[*Latin ed. p. 303*]

Let him who desires to understand the probability of this second opinion consider: for it cannot begin to be said that possession of any thing has commenced, unless with the certainty of the law, as we have said many times. Volume 3, number 66g and 761. See Question 2. Therefore, I say that if he wishes to acquire the fruits [of this office], he is bound to associate a partner. 159. § 5. On Dispensation: which the Pope alone can grant validly without a cause, and the bishop with a cause. And thus, a subdeacon who takes a wife by pontifical dispensation is, by that very fact, freed from the obligation of the canonical hours, as Sanch. de matr. book 8, chapter 8 teaches; and as Dian. page 8, treatise 3, rule 34 states. The Pope can dispense in office, even with a beneficiary, as Croix rightly says in book 4, number 1233, asserting that this is the common practice. For, as we said above with Silv., Less., Panorm., the obligation of the office is not of natural law, but of ecclesiastical precept; and therefore, the Pope can validly dispense even without a cause. However, the bishop cannot dispense, except with a cause and with some particular circumstance, and for a limited time, as Wig. page 431, number 94, Holzm. page 451, number 477, Conc. page 398, number 6, and Croix, ibid., say, who, with Tamb., state that this is the accepted practice. A just cause for dispensing is if there is doubt about the moral impotence of the cleric, as Croix says in the aforementioned passage, citing D. Th. 2. 2. q. 147. a. 4. Gob. says.

[*Latin ed. p. 304*]

At Croix, the same applies to a general vicar; but this must be understood, if he has a special mandate from the bishop, according to what is stated in book 3, number 1033. ARTICLE FOURTH. HOW THE HOURS ARE TO BE RECITED. 160. It is required that they be recited according to the prescription of the Roman Breviary. 161. Q. 1st: Is there an obligation to recite the litanies? Q. 2nd: Is there an obligation regarding the Office for the Dead? Q. 3rd: Is it permissible to shorten the Office? Q. 4th: Can one conform oneself with a cleric who has privileges? Q. 5th: Is one who errs in the Office obligated to repeat it? 162. It is required that there be vocal pronunciation. 163. Q. 1st: Does one satisfy the requirement by reading, if one does not hear oneself? But does one satisfy the requirement by reciting submissively in the choir? (Reference to book 3, number 675, see question

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4). Q. 2nd: If one recites the Office in the choir or with a companion, is one obligated to repeat what one does not understand? Q. 3rd: Does a deaf or hard-of-hearing person satisfy the requirement by reciting in the choir? 164. It is required that there be complete pronunciation. 165. How does one sin by mutilating the words? What if one recites with a companion who is mutilating? 166. It is required that there be continuous pronunciation. 169. Can Matins be separated from the Lauds? And if so, is there an obligation to conclude the hours and Matins with the "Pater" and the prayer of the current Office? And can the Nocturns be separated from each other? 168. Is the hour to be repeated if there is a significant interruption? What are the just causes for interruption? 169. It is required that the order not be inverted.

[*Latin ed. p. 305*]

170. Causes for altering the order.

171. Whether there is a serious obligation to recite the hours in their proper order and at fixed times.

172. It is required that the hours be said at their proper time.

173. What are the just causes for anticipating or postponing them? At what time should the hours be said?

174. Question 1st: When may Matins be said? Question 2nd: May Matins for the dead be recited the day before? Question 3rd: May litanies be recited at the Vespers of the preceding day?

175. It is required that the hours be recited attentively and devoutly.

176. What intention is required? And what attention? And 1st, concerning external attention. 2nd, concerning internal attention.

177. Whether internal attention is necessary for satisfaction. And whether a cleric reciting without internal attention is excused from penance. Reference to book 3, number 66g. Rule for setting aside scruples.

178. Whether and how does one sin by reciting the Office while being in mortal sin?

179. Is it permissible to recite the Office in an indecent place? Is reciting outside the choir obligatory?

180. "RESPONSE: The following circumstances must be observed in the recitation of the hours. 1st, that they be recited according to the prescriptions of the Roman Breviary, ordered by Pius V, at least publicly. Exceptions are made for religious orders who have a particular breviary of their order, and for churches which, 200 years before the institution of the Breviary by Pius V, had a particular breviary; these, however, without consent..."

[*Latin ed. p. 306*]

Bishops cannot change that. However, privately, it is probable that it is

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permissible for all, even those under religious vows, to use the *romano*, as Less. c. 37, d. 12, Rodr. and Sa, v. Horæ, Bon. d. 1. q. 3. p. 1, teach. Furthermore, he who uses it is not obligated in the choir to recite the penitential psalms, the gradual, the office for the dead, except on the Feast of All Souls. However, the Office of the Blessed Virgin Mary should be recited in the choir where there is custom. Thus, Fill. and Bon. cite the bull of Pius V and Clement VIII. Also, he is bound to recite the litanies on the days of Rogation, both because they are part of the office on that day, and because there is a special constitution concerning this matter. Thus, Bon. *loco citato* from Fill.; although *Diana* p. 2. l. 12. r. 12, citing Vasq., states the contrary. Also, Escob. l. 5. c. 6. If, through inadvertence or necessity, for example, because you have no readings for the feast, you change the office, so that you say what should be said on a weekday when it was to be said for a saint, or vice versa, there will be no sin nor obligation to repeat, although it is advisable to repeat those things that pertain to the proper office. However, if the change is made deliberately, a different judgment seems to be required, since the reason is not the same. Although, in that case, it is probable that you commit only a venial sin and are not bound to repeat or restore anything, because the substance of the precept has been fulfilled, Escob. l. 5. e. 6. c. 5., *Dian.* p. 3. l. 12. r. 3., as well as Caj., Silv., and Binsf., hold.

[*Latin ed. p. 307*]

Az., Valent., Less., Fill. et alii, citati a Bon. de i. q. i. p. i. n. 17, et Dian. l. c., contra multos alios quos citat et sequitur Barbosa. Laym. vero l. 4. t. i. c. 4. n. 4. cum Suar. limitat; nisi per fraudem: ut si multo lon-gius in multo brevius, v. gr. paschale, mutetur (licet Caram. apud Dian. p. 7. t. 11. r. 16. contra communem sententiam etiam sic præceptum impleri et venialiter tantum pec-cari); aut idem pro libito toto anno dicatur; quia est gravis inordinatio. V. Trull. d. 14. n. 11., ubi docet eum qui per erro-rem legit hodie de sancto qui cras v. gr. colitur, posse cras legere de sancto qui hodie celebratur; ne is hoc anno omittatur; imo ita faciendum esse vult Quintan. t. 8. sing. 10. Verum contrarium rectius tenet Vill., eo quod præstat semel quam bis. er-rare; idque multis bene confirmat Lugo resp. m. l. 5. d. 8. Similiter eum qui per erro-rem vel oblivionem in festo duplici vel semiduplici non recitavit de proprio, posse de eo legere primo die non impedito g. lectio-num officio, docet idem Quintan. t. 9. s. 9. esse probabile. Verum et hoc merito rejicit Lug. loc. cit. et ipse Quintan. contrariam sententiam agnoscit probabiliorem. Denique, qui in aliquibus horis erravit, legendo v. gr. de feria quando erat de festo vel contra, agno-scens errorem, non debet eum continuare.

[*Latin ed. p. 308*]

But the remaining hours should be spent reading according to his office,

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and during the day, he should strive to conform in all things to the entire Church or the community of which he is a part, and to observe the law as much as possible. Lugo, *locus citatus*, chapter 161. Question: Here, the first question is whether there is a serious obligation to recite the litanies on the days of Saint Mark and the Rogation Days. The first opinion, which is the more common one, affirms this, and is held by the *Glossa* in chapter 3 of the decrees, section 3, *distinction* 3; *Palatinus*, book 2, page 2, number 13; *Bonus*, question 3, page 1, number 13; *Tournhem*, volume 1, page 631; *Conciliorum*, volume 2, page 387, number 23; *Viva*, question 1, article 2, number 2; *Sporer*, volume 3, page 74, number 95; *Croix*, book 4, number 1290; *Mazzella*, volume 1, page 30; *Holzmeister*, page 450, number 475, and *Sahm*, page 1, number 23, with *Suarez*, *Bonus*, *Trullius*, *Leander*, etc. The reason is that in the rubric (after the second reading of the 5th Sunday after Easter), it is said: "Those who are not present at the procession of litanies should recite them privately after Matins, along with their prayers and devotions." But the word "should" implies a serious precept when the matter is serious (which, without doubt, is the matter of the litanies), as taught by Sanchez, decrees, book 6, chapter 4, article 24. This is also confirmed by a declaration of the Sacred Congregation (cited by Gavan, *rubricae breves*, section 6, chapter 16), in which it was stated that those who were absent from the procession, but did not sing, are to repeat or recite the litanies privately. The second opinion, however, denies this, and is held by *Diana*, page 4, treatise 4, response 243, with *Vasquez*, *Graffius*, and *Homobonus*, as well as *Macadam*, *Pellizzari*, *Molfetta*,

[*Latin ed. p. 309*]

Ant. from St. Philip, St. Thomas, and St. Mark, according to Salmeron, in the aforementioned place, who consider it probable; as also Mazzarelli believes, in the aforementioned place. The reason for this is that nowhere is there a precise precept on this matter that imposes a grave obligation. Nor do they claim that the rubric cited presents an obstacle; for they say that the word does not contain a precept, as Cajetan holds in 2-2, question 166, article 9, in the solution to the second part, where he says: "Indeed, in the manner of speaking, for example, 'because the law lives in an imperative mode which does not impose a precept'; for this manner of speaking denotes a command grammatically, not juridically." Or, they believe that it does not impose a grave precept, as Navar demonstrates in *Manual*, chapter 23, section 46, saying: "But the canonical laws which do not have a prohibitive or imperative character, but are only regulatory or constitutive, even if they are in an imperative mode, such as those that say 'they shall do,' 'they shall say,' etc., according to common understanding, do not signify a precept." And this seems to be in accordance with the teaching of St. Thomas, who, in the aforementioned place, in the solution to the second part, says: "Nor

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do all regulations in Church law impose a mortal obligation." And they also cite Lex n. 6 and Sayr, book 3, chapter 7, number 16. Therefore, I do not dare to say that this second opinion is improbable; but the first one is more pleasing to me; because (as Tournhem asserts in the aforementioned place, and Anaclasius, page 194, number 36), everywhere the custom of reciting litanies prevails, which is the best interpreter of laws.

[*Latin ed. p. 310*]

Question 2. Whether there is a grave obligation to recite the Divine Office for the dead. Some deny this, an opinion which they consider probable, as stated by Mazz. vol. 1, page 301, and by Gobius and Tommaso, apud Croix, book 4, chapter 1289. However, it is truer to affirm, in accordance with the common opinion, as held by Tourn. page 631, Council of Trent, page 387, paragraph 14, Palafox, in loco, paragraph 23, Bona, paragraph 12, Viva, question 3, article 2, Sporer, page 74, paragraph 95, Holzmüller, page 450, paragraph 475, along with Anaclasius, Stoz, etc., Salmeron, chapter 1, paragraph 22, along with Antoninus of Florence and Pell, who state that the opposing opinion is not practically probable; but Croix, in loco, with Suarez and Diana, says that it is not entirely safe. The reason is that this obligation has already been introduced by custom, which, when observed universally and constantly with great inconvenience, should not be abandoned, according to what is stated in book 3, paragraph 1009, see Question 3. And for this reason, Diana, page 4, treatise 4, paragraph 243, although attempting to defend the opposing opinion, stated that he did not dare to deviate from the common opinion.

Question 3. Whether it is a mortal sin to exchange the Divine Office of one day for a shorter one. First of all, it is necessary to note proposition 34, condemned by Alexander VIII, which stated: "On Palm Sunday, reciting the Little Office suffices for the fulfillment of the precept." And similarly, the Office of Pentecost is exchanged, as well stated by Salmeron, chapter 3, paragraph 19, and others in common. Conversely, he who...

[*Latin ed. p. 311*]

Through inadvertence, one cleric performs one office for another; he is not bound to repeat it, as commonly taught by Bus. as above, n. 160, Less. lib. 2, c. 37, n. 77, Anacl. p. 190, n. 62, Viva art. 2, n. 6, Cont. Tourn. p. 629, q. 4, Conc. t. 2, p. 481, n. 15, Laym. lib. 4, tr. 1, c. 5, n. 5, with Silv., Caj., Azor. and Less, Abelly append. p. 456, n. 2, Croix lib. 4, n. 1351, and Salm. c. 5, n. 21, with Vill., Trull. etc. The reason is that the Church does not presume to wish that anyone should be obligated twice in one day for the same duty. However, Laym. d. n. 5 states that it is advisable (but not obligatory) to add to the omitted office of one's own. Indeed, Tourn. reasonably observes in the aforementioned place, with Laym., Bon. etc., that if an office has been notably shortened, for example, the office of a saint on a Sunday,

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then compensation should be made by reciting nine Psalms from the first nocturn. Regarding the question itself, there are four opinions. The first absolutely denies that it is a mortal sin, and this opinion is held by Less. l. 2, c. 37, n. 77, Caj. v. Horæ c. 2, Silvest. ibid. v, n. 15, Az. p. 1, l. 10, c. 10, q. 2, as well as Vill., Dian., Anton. a Spir. S. etc. apud Salm. c. 3, n. 18. The reason is that it suffices to fulfill the precept of the office if it is fulfilled in substance, and this occurs when the seven hours are said. And Salm. n. 18, and Card. and Gob. apud Croix lib. 4, n. 1250, consider this opinion probable; and with these...

[*Latin ed. p. 312*]

Formerly, I held the opinion: but now I believe, with Ronc. c. 5, q. 6, that it cannot be maintained; because, when the Office is recited noticeably more briefly, it is not fulfilled, neither in its form nor in a substantially equivalent manner, according to the second opinion, which we shall soon present. Therefore, the second opinion, which is defended by Bon. q. 3, p. 1, n. 18, along with Suar. and Fill., Laym. l. 4, tr. 1, c. 5, n. 4 and 5 (whom Sahm wrongly cites for the first opinion), Anacl. p. 190, n. 61, and is considered probable by Pal. d. 2, p. 2, n. 17, and Holzm. p. 445, v. But Sed petes, holds that one does not gravely sin who changes the Office to an equivalent or nearly equivalent one. The reason is, as is said in L. fin. ff. Mandati: The form of the thing itself is preserved, if it is done through an equivalent. Hence, the aforementioned authors say that the Pontiff, when assigning a specific form for the recitation of the breviary, considered more the quantity, as a substantial form, than the quality of the Office, which is an accidental form or the manner of reciting. It is said that one does not gravely sin; for he who changes the Office, still to an equivalent one, without cause, cannot be excused from a venial sin. However, a cause that excuses can be, for example, the necessity of studying, preaching, teaching, traveling, as say Viva q. 3, art. 3, n. 4, and Sanch., Nav. and Tamb. apud Croix l. 4, n. 1252. The third opinion, which is held by Pal. d. 2,

[*Latin ed. p. 313*]

p. 2, n. 18; Council, vol. 2, p. 480, n. 11; Tourn., p. 629; Holzm., p. 444, n. 466; Salm., ch. 3, n. 20, with Reg., Suar., Bell., Garc., Trull., Rodr., Fill., Led., Macad., etc., teaches that it is a mortal offense to change, even in an equal manner, the Office, if it has once been assigned. The reason is that St. Pius V, in his *bulla*, *A nobis præcepit*, commanded that the Office be recited in its specific and individual form, according to the form assigned to each day, when he said: "We command that all those who are obliged to recite the canonical hours observe this breviary, and that they be bound to recite according to the prescriptions of this Roman breviary and in every respect according to its form, and that no one may satisfy the obligation except in this very form." Therefore, the authors of this opinion say that the precept

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concerning the Office is not about reciting it in general, but according to the prescribed form, namely, on such a day, about such a saint, about such a Sunday, etc., which pertains to the substance. Finally, the fourth opinion, held by Spor., p. 78, n. 624; Ronc., ch. 5, q. 6; Viva, q. 1, art. 2, n. 4; Elb., p. 556, n. 453; Tamb., ch. 5, § 2, n. 20, and considered probable by Laym., ch. 5, n. 4, with others apud Salm., n. 21, teaches that he who frequently changes the Office sins gravely, but he who changes it rarely, for example, three or four times in one day, sins venially; provided that the change is not made to a noticeably shorter Office and without a cause: for, from a reasonable cause, namely, study.

[*Latin ed. p. 314*]

The frequent change of offices, whether due to the demands of the journey, infirmity of health, great fatigue, or special devotion to a particular saint, is not venial, as Viva, *loc. cit.*, and Navarrus, Cardinal and Tamburrini, in *Croix, lib. 4, n. 1251*, state. Some argue that the reason why frequent changes of offices are mortal is because such a change appears to be a virtual contempt of the order of the office. However, this reasoning is not convincing; rather, it is more accurately stated, as in *D. Th. 2. 2. q. 186. art. 9. n. 3* (followed by Sanch. *dec. l. 1. c. 5. n. 8* and others), that the frequency of transgressions does not necessarily involve contempt of the law; for the Saintly Doctor states: "It must be said that someone transgresses out of contempt when his will refuses to submit to the order of the law or rule, and from this proceeds to do something against the law; but when, on the contrary, for some reason, such as concupiscence or anger, he is led to do something against the statutes of the law, he does not sin out of contempt, even if he frequently commits the sin." A more fitting reason is that the frequent change of offices (as Layman states) constitutes a serious perversion of order; for although each individual variation, taken separately, may be venial due to the smallness of the matter, all of them, within the year, coalesce and gravely disturb the order of the breviary precepts for the offices of the entire year; taken together, they form a single complex. From these considerations (and I offer my own opinion).

[*Latin ed. p. 315*]

The judgment [regarding the change of office] is as follows: the first [reason], concerning the peace of those who maintain it, can scarcely be upheld, as I have said; the second and third [reasons] seem quite probable, but I consider the fourth to be more equitable. Now, according to all the aforementioned opinions, the following causes probably excuse [one] from the change of office: 1st, if you remain in another place, you can recite the office of that place, as Laym states in book 4, title 1, chapter 5, paragraph 3; Holzmüller, page 445, paragraph 466. As we have said, Stosch, Bonaventure, and Tamburrini, cited by Croix in book 4, paragraph 1253,

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agree. However, Holzmüller, along with Palafox, Tamburrini, and Cherubini, except religious [persons]; for these are bound to the breviary of their order by the force of their profession, by which bond they are obligated wherever they may be. Croix, in paragraph 1244, along with Suarez, Quintilla, and Gobius, states that, if you are somewhere as a visitor, you can recite the offices of your homeland. Gobius adds, in the same place, that if you change your residence, you can make up for the offices omitted in the former place. 2nd, a chaplain of a bishop can conform to him in the office; Holzmüller, in the same place, citing a decree of the Sacred Congregation of Rites from the year 1605. This is further confirmed by Clementine, in *Dignum*, concerning the celebration of Mass, where it is granted to those who are guests and servants of cardinals and bishops to use the office and breviary with which these [cardinals and bishops] use. The same is said of the chaplain of nuns, who, while he may read the Mass of the order, can also recite the office of that order; indeed, the rubric indicates this.

[*Latin ed. p. 316*]

The office should be recited in accordance with the Mass. Holzmüller, op. cit., and Croix, no. 1254. This is also probably stated by Laymann, op. cit., and Gobat, apud Croix, no. 1253, concerning one who dies while engaged in exercises among religious.

3. A beneficiary can recite the office according to the rite of the first class, along with the octave office of his title, as Lugo, Responsiones morales, book 5, question 8, no. 10, and Holzmüller, loc. cit., with Tamburrini, Gobat, Clericus, etc., state. However, a beneficiary who holds two benefices must recite the office of the place where he resides; Council of Trent, Session 22, chapter 3, paragraph 10.

4. If one recites the office with a companion, one can conform to the companion's rite, as some say, for a reason; but also without a reason, as Viva, quaestiones morales, book 3, article 2, no. 8, with Quintillian and Henricus, Roncaglia, chapter 5, question 5, page 155, with Portius and Diana, page 2, reply 12, rule 35, hold. And this seems to me quite probable, provided that the office is exchanged for an equal or nearly equal one; for, according to the second opinion concerning the exchange of offices, which we have already deemed probable, any reasonable cause suffices to change the office to an equal one; and here, the very companionship seems to be a sufficient reasonable cause, since St. Clement of Rome, book 4, constitution, chapter 34 (apud Bonaventure, page 2, section 1, no. 7), exhorts the faithful to pray at least in pairs or threes, according to the words of Matthew 18: "Where two or three are gathered together in my name, there am I in the midst of them."

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Question: Can one conform to...

[*Latin ed. p. 317*]

A cleric who enjoys a shorter office is privileged in that office. The Council absolutely denies this, p. 393, n. 12. However, others affirm it, namely Ronc., loc. cit.; Stoz., apud Holzm., p. 445, v.; We have said, Diana, p. 2, tr. 12, r. 35, with Port.; Tamb., dict., n. 27, with Henr. and others; also Trull., Rodr., and Leand., apud Conc., loc. cit. The reason for this is that the same rule must be observed in correlatives; hence, the privilege of one extends to another, according to the law *de acceptis*. Furthermore, since everyone can lawfully have a companion in the office, if one could not recite the office more briefly with a companion, it would seem that the privilege would in some way derogate from its own right. Others, however, say, as Croix, n. 1256; Holzm., loc. cit.; Spor., p. 79, n. 123; and Gob., *de hor. can.*, n. 911, that at least once or twice, a companion may join with the privileged cleric, when the latter, for some reasonable cause, such as infirmity, weakness of sight, or the like, could scarcely use his privilege without the help of a companion. However, neither of these opinions satisfies me; for the reason of correlatives, as mentioned above, does not convince, since it is indeed valid for necessary correlatives, such as husbands and wives, but not for voluntary ones, namely, for companions who, at their own discretion, become companions. The reason of the mere infirmity or difficulty of the privileged person in reciting does not seem sufficient.

[*Latin ed. p. 318*]

To excuse a member from performing a duty and to allow him to exchange it for another, which is notably shorter, Question 5: Whether one who, through error, recited the Office of a Saint today, omitting his own proper Office for that day, may recite the omitted Office on another day. Pellizari states in *Tractatus*, book 5, chapter 8, number 74; Quintillian in *Variae Sententiae*, singular number 9, number 3; and Salmeron in chapter 3, number 21, that it is better to conform to the common practice of the Church, but that it is also probably permissible to recite the omitted Office. However, Lugo in *Responsiones Morales*, book 5, doubt 8, number 2, and Villalobos in *Pandectae*, part 1, treatise 22, number 3, following Busenbaum as cited above, maintain that the Office of the day must be recited. The reason is that the Church only prescribes the transfer of the Office when one is hindered by a Sunday or a more important Office. This opinion seems more probable, but the first opinion does not appear to be improbable, as Pothenot states in page 53, number 448, and Tamburrino in chapter 5, section 2, number 29. The reason is that, just as the Office of a Saint is rightly transferred from a day hindered by an impediment to another day that is not hindered, so too it seems reasonable to transfer the Office due to a moral impediment, such as error or ignorance, so that

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the Saint is not deprived of his proper honor in that year. However, if you realize that you have erred after having proceeded quite far in the improper Office, for example, if you have said Matins, then you can either continue or recite the remainder of the proper Office, as Lessius states in book 2, chapter 37, number 77, and Roncaglia in page 155.

[*Latin ed. p. 319*]

q. 6, and Psalm 3, verse 21, with Villalobos, Quintillian, the Council of Trent, etc. But I believe that, as Croix states in book 4, chapter 1255, and Tamborini in de Sac. § 2, chapter 31, it is better to recite the prayers from one's own missal, lest one pursue an error. If, however, you have forgotten a portion of the hour, it suffices to recite that portion, without repeating anything else, as Croix rightly states in book 4, chapter 1311, with Navar, Vasquez, Sanchin, Bona, Fillon, Abelly, etc. However, Arminius and others, it is more probable, believe that the entire hour must be repeated if you have omitted a significant portion through fault; because there is an obligation (at least a slight one) to perform a continuous prayer according to the prescribed rite. But see below, chapter 168, 162. "2. Vocal utterance is external; for it is of the essence of the precept. And if, with a companion in prayer (which is done properly and is in accordance with the first institution of the Church and the public rite of prayer, and is permissible, even if that person is not obligated to participate or does not inwardly attend, as Bona states in question 3, paragraph 2, section 1), this vocal utterance must be used so that you may be heard by him, and he may hear you in turn. However, the author of the Hours believes that it is sufficient, even if you do not perceive everything that is said by your companion; nor is anything therefore to be scruplously repeated. If, however, you are reading alone, Regius and Suarez teach that you should read in such a way that you can hear yourself. But it is probable that this is not required, since the Church does not prescribe it, as Azor states in book 1, chapter 10, chapter 11, question 4.

[*Latin ed. p. 320*]

Bonifacius and Dionysius, De Divinis Officiis, book 11, chapter 23, paragraph 3, number 117, permit this practice for those who are scrupulous. If more than two recite the office together, one should not recite the first verse, another the second, and a third the third, but rather they should alternate, forming only a double choir, whether there are more on one side or fewer; for this is the usage and practice of the Church. This is different for the readings, where the first recites the first, the second the second, and the third the third; indeed, in some places, custom allows that all may be recited from one person, while others listen. Bonifacius, in the distinctions, 1, question 5, part 2, section 1, citing Suarez, Azorín, and Layam, adds that it suffices for one who only hears the readings, or prayers, or chapters, or responsories, and does not recite. See Bonifacius, in the same place; also,

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the Council of Trull, canon 16, number 17. "It is the common opinion, as they say with Bus, immediately above, in Salmeron, chapter 3, number 6, with Suarez, Pellican, and Croix, book 4, number 1298, with Bonifacius, Fillon, Regius, Strozzi, Tamburrini, etc., that it suffices well for one who hears from a companion the readings, responsories, chapters, and prayers, and antiphons, as Croix adds well, in the same place, with the aforementioned authors. And Pellican and Antoninus of the Holy Spirit, apud Salmeron, in the same place, probably hold that it suffices for one who recites the psalms alone and hears the readings, or who recites a part of the psalms alone and a part with a companion; (contrary to Croix, in the place mentioned above, with Gobius, Dionysius, and Mazzola, volume 1, page 501)."

[*Latin ed. p. 321*]

because it communicates sufficiently in that part which it hears, and to which, through its reception, it has already been satisfied by hearing. 165. Question: But does one reciting the Office need to hear oneself, in order to fulfill the obligation? The affirmative is maintained. Pal. p. 3, n. 6; Suar. l. 4, de rel. c. 7, n. 6; also Pelliz., Reg. et Anton. a Spir. S. apud Salm. c. 3, n. 5. Because (as they say), in order for prayer to be vocal, it must be uttered with the voice; but words which are merely mumbled between the teeth are not a voice, but rather the beginning of a voice. However, it is sufficiently probable that Laym. c. 5, n. 8; Azor. p. i, l. 10, c. 11, q. 4; Spor. p. 76, n. 110; Tourn. t. i, p. 644; Diana 7, p. tr. 11, r. 16; Salm. c. 3, n. 5, with Rodr., Trull., Leand. etc., and the most learned Silv. (in res. v. Horæ n. 3) teach this; whose doctrine our Most Holy Pope Benedict XIV highly esteemed in many places in his bulls. This author presents and proves his opinion as follows: It is sufficient even if you do not hear yourself; because it is not proven by any law that one reciting the hours is obligated to hear oneself, since the precept obliges to speak, not to hear the hours. Furthermore, he gives this reason why one reciting thus already prays vocally: Because prayer can be made with the mouth and with the voice, even if it is not heard by the one reciting, and a certain sound is formed from the exhalation of air against the teeth and lips. Therefore, the reason is...

[*Latin ed. p. 322*]

For the fulfillment of the canonical hours, the recitation, or vocalization, of the words is prescribed, but not necessarily a loud utterance. To distinguish this vocal recitation from mental recitation, it is not strictly necessary that the voice be raised or formed; otherwise, those who recite without any audible sound would not fulfill their obligation. Rather, it suffices that some sound be formed by the words, even if it is slight and barely perceptible (what is commonly called "recitando a facto"), as is the practice of those who privately perform their duties, and as is the case with the recitation of the secret prayers of the Mass. This slight sound, when the words are

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uttered (as Silvester rightly observes), is always produced, because the utterance cannot be made without the compression of air through the tongue and lips, from which a certain sound necessarily arises. Whether that sound is heard or not is accidental. As for whether those who recite psalms in a choir, listening to one part while reciting the other, fulfill their obligation, speaking generally of choirs, it is probable that they do, as taught by Suarez, *Tomus 2, Lib. 4, Cap. 12, n. 8*; Sanchez, *Consilia, 1. 2, Lib. 7, Cap. 2, Dub. 14, n. 2*; Lessius, *Lib. 2, Cap. 39, n. 184*; Soto, *De Justitia, Lib. 10, Q. 5, Art. 4*; Bonaventure, *Doctorum, 1, Q. 3, P. 2, §. 1, n. 16*; and Salmeron, *Cap. 1, n. 25*, with Fillon, Aragonez, Trullius, Villalobos, Philotheus, etc. The reason is that it is not required that those reciting in a choir hear the voices of all those reciting in the other part (which is assumed to be certain).

[*Latin ed. p. 323*]

In question 2, and following, at the end, it is stated that when one part constitutes a single body with another, and they communicate invisibly. Conversely, it must be said concerning the canons who, if they do not chant, lose both the distributions and the fruits of their prebend, according to what is stated in law 3, number 675, see question 4. It is asked: if you recite the office in the choir or with companions, are you obligated to repeat those things which you do not sufficiently hear? Generally, all say that if, due to the noise of others, you do not hear, you fulfill the office adequately. It is doubtful whether you fulfill it if you do not hear due to the fault of the choir or a companion. The first opinion denies this, and this opinion is held by Bonaventure, *De distinctionibus*, 1, question 3, paragraph 2, section 1, number 9; Croix, *Summa*, 4, number 1294; and Palearius, *Summa*, 3, paragraph 4, number 6, who state that you indeed receive the distributions of the choir, but are obligated to repeat; but this only applies if the part not heard is significant; otherwise, if it is slight. The reason is that the one who hears cannot communicate in those things which he does not perceive. The second opinion affirms this, and this opinion is held by Spotorius, *Tractatus*, 3, number 107; Sabinus, *Lumen moralis*, page 2, treatise 54, number 26; Tamburrini, *Summa*, 2, chapter 5, section 4, number 12; Pothenus, *Summa*, 1, question 2, chapter 3, number 444; and Salmerius, chapter 1, number 24, with Trullius, Diano, Pasqualis, and Pellizzari, as well as Sa and Major, apud Layman, chapter 5, number 8, who do not disapprove, and Elbing considers it probable, with Pellizzari and Gobius. Roncaglia, page 155, question 8, and Trullius, speaking of recitation in the choir, hold the same opinion. These believe that you...

[*Latin ed. p. 324*]

One satisfies [the obligation], if one attends as much as one can, and, due to the fault of the choir or a companion, one does not understand what is said. Saint Anthony favors this view, who in his *Summa Moralis*,

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part 2, page 3, chapter 9, number 12, teaches thus: "If someone does not understand a reading or something else that is read in the choir, due to the ineptitude of the reader, he does not sin, provided that he tries to understand at least the words." The reason is that, at that time, through the very community and through your own application, you are considered morally to participate in prayer, as you intend to offer to God all the praises and prayers that the choir or companion offer. This opinion seems quite probable: indeed, this precept of the office should be interpreted benevolently, given the kindness of the Church; otherwise, it would be very burdensome, and those who are in the office would always be anxious about how much of the hearing has been omitted, so that they would be held to repeat it or not.

However, it is certain, as Holzmüller states on page 449, and Roncaglia in the *Disputationes de Sacrificio Missae*, question 8, with Azorín and Regius, that it is not necessary for everyone to hear everything in the choir, but it is sufficient for one person to hear, and it is sufficient to hear at least part of another choir, even if one cannot hear distinctly, as Salm affirms in his *Disputationes*, number 24, and as almost all Doctors testify. Similarly, it is certain, as Innocent IV teaches in chapter 9 of *De Celebratione Missae*, that if one omits saying a word in the choir (understand, not willingly), one does not sin; for the choir makes up for it.

[*Latin ed. p. 325*]

Question 3: Whether a deaf person fulfills his duty when he attends the choir by obligation and recites his part.

Several authorities affirm this, including Suarez, *t. 4. de rel. c. 28. n. 18*, Escobar, *de hor. can. q. 4. n. 6*, Roncaglia, *c. 5. q. 8*, and Sa and Recaf, apud Dian, *p. 9. tr. 9. r. 28*. They consider it probable. The reason is that, on the one hand, he is obligated to attend the choir, but, on the other hand, he is not, by his deafness alone, prevented from hearing; therefore, it suffices that he perform the assistance that he can, by reciting his part. For a condition that someone is obligated to fulfill is considered to be met when, through his actions, it is not prevented from being fulfilled, and it is harsh to obligate someone to a double duty.

However, I prefer the opposing opinion, as found in Paleario, *d. 3. p. 4. n. 6*, Sanchez, *c. 1. d. 13*, Salmeron, *c. 3. n. 5*, and Elburg, *n. 448*, who say that a deaf person does indeed receive the distributions, but is obligated to repeat what he has not heard. It is not true that he is thus obligated to a double duty; for he is only obligated to supply the part that he has not heard. Furthermore, he can, with good reason, fulfill his duty by saying, in a submissive manner, the part of another member of the choir.

Conversely, Salmeron, *c. 1. n. 24*, Elburg, *l.c.*, and Tamburrini, *c. 5. §. 4. n. 13*, along with Suarez, *de surdastro*, argue that a deaf person who can hear at times and gives the attention that he can, should be considered

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to fulfill his duty. This is probable, at least if he notices in the breviary what is said in a confused manner, so that he can understand well what is being said.

[*Latin ed. p. 326*]

164. » 3. The recitation must be complete, without any omission or abbreviation of words or syllables, without haste, *Bonifacius*, Dist. 1, c. 3, p. 1, § 1. However, this defect can more easily lead to mortal sin in public, due to the scandal and the stricter precept of the Church, than in private. *Azor. et Fill.* 1. 2. l. 23, c. 2; *Escob.*, *Dian.*, part. 2, tr. 12, res. 32. Here, it is added that he who, while reciting, omits the final syllables, fulfills his duty and is not obligated to repeat. When, in singing, due to excessive speed and the omission of syllables (or for another reason), the listeners cannot perceive and understand the words, it is ordinarily only a venial sin, and they are not obligated to repeat the recitation; unless there is contempt, or a grave scandal, or a notable corruption and deformation of the words throughout the entire singing. See *Diana*, lib. 4; *Silv. et Trull.*, Dist. 15. Here, it is stated that, according to *Navar*, *Azor*, *Lessius*, and *Palafox*, those who recite with their companions so hastily that, before their companion has finished the verses, they begin, do not fulfill their duty; because the part that is anticipated is not shared with the companion, who cannot hear it. However, *Navar*, *Salmeron*, and *Suarez* excuse the deaf person, who does not understand or cannot follow the others singing in the choir. » 165. One sins only venially if the syllables are so mutilated or omitted that the meaning of the words...

[*Latin ed. p. 327*]

It is not corrupting, nor is it considered a fault, even if a small quantity is omitted; indeed, in no way do you sin if you do so involuntarily, due to inattention, a stammer, or an ingrained habit which is difficult to overcome. Conversely, you are not excused from a mortal sin if the omission is significant and the meaning is notably altered. Thus, commonly, Lessius, *lib. 2, cap. 37, no. 52*; Palafox, *d. 2, p. 4, no. 2*; Layman, *cap. 5, no. 8*; Anacleto, *p. 197, no. 50*; Spotorno, *p. 75, no. 103*; Croix, *l. 4, no. 1302*; Salmeron, *cap. 3, no. 2*, with the Council of Trent; Pellio and Viva, *q. 3, art. 2, no. 4*, with Azorín; Fillon, and others. In such a case, it is certainly necessary to compensate for the part in which the meaning is corrupted, by reciting an equivalent amount, as Mazzola rightly states, *l. 1, p. 302*, and Croix, *no. 1303*. And this, even if it was done involuntarily. Furthermore, it is commonly held, and with good reason, that Palafox, *l. c.*; Spotorno, *no. 102* (who states that all agree on this); Anacleto, *l. c.*; and Croix, *no. 1302*, with Suarez, Garcias, and Gobinus, and Salmeron, *d. n. 2*, at the end, with Fillion, Villalobos, and Leander, that you sufficiently fulfill the obligation of reciting the prayers, even if the words are notably omitted, when some

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meaning of the words is preserved. Hence, it is probable that you are not required to repeat, if you recite with a companion who truncates syllables, but in such a way that the meaning is not notably altered, as Viva states, *l. c.*; and he rightly adds that you are not required to repeat unless it is clear to you.

[*Latin ed. p. 328*]

He has omitted a notable part; for presumption stands in place of proper recitation. However, I believe you would not be excused from venial sin if you recite willingly with such a deficient companion, unless there is some reason, namely, if you are invited by a superior or a person of very serious standing, or a similar cause. It is certainly true that those who do not await the verses to be absolved by alternating recitation will not satisfy [their obligation], if this is done in a large quantity. See AA. apud Bus. 166. » 4. Continuous recitation of one hour. If, however, an interruption occurs for a notable time without cause, it will be only a venial sin, as Fern., Laym., and Less. d. 10. say; because each psalm has its complete meaning. If it is done for a just cause, there will be no fault, nor need to repeat what was previously recited; which is true, even if you interrupted with the intention of repeating. However, it is advisable, if the interruption was lengthy, to repeat from the beginning of the psalm or nocturn: indeed, it is probable that the nocturns can be said separately, at least within a space of three hours (which seems certain, if a just cause is present): because, according to some of the ancients, it was done in this way, as Vill. t. 23. c. 6. and Bon. q. 5. p. 3., Escob., etc., teach. (Salm. d. n. 5. certainly holds the same opinion.) Quint. t. 9. sess. 3. adds that the readings, whether there are three or nine, can be divided from the psalms of the same office without grave fault, without cause, and with cause, without any fault whatsoever.

[*Latin ed. p. 329*]

The Matins. The division of Matins from the Lauds does not signify an interruption of the Office; therefore, it can be recited privately without cause. *Directorium*, page 5, treatise 14, reason 48, citing Bonaventure, Fillon, Sanchez, etc. Also, the Council of Trent, book 1, chapter 7, decree 11, paragraph 16. It is commonly held that Matins can be separated from Lauds without any cause, as stated by Salmeron, chapter 3, paragraph 4; Bonaventure, page 3, paragraph 11; Council of Lyons, page 368, with Suarez, Sanchez, Navar, Fillon, etc.; and Croix, book 4, paragraph 1305, with Lessius and Abelly. However, when they are separated, the Our Father must be added, as Croix rightly states, citing the rubric which commands that the Our Father be said after each hour when the Office is concluded. Whether the prayer should also be added is affirmed by Navar, Bonaventure, Gavant, etc., as cited by Croix in the same place, who consider it probable that Matins and Lauds constitute two hours; and they

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deduce this from rubric 31, paragraph 4, where it is prescribed that, after the Te Deum, Lauds should immediately begin, except on the night of the Nativity of the Lord, because then the prayer is said, and then Mass is celebrated. However, Salmeron, chapter 3, paragraph 4, with Sanchez and Azorín, and Viva, question 3, article 9, paragraph 5, and Mazzola, volume 1, page 303, and Croix, paragraph 1505, with Pellizzari, Strozzi, Gobius, etc., argue against this, considering it probable that Matins and Lauds constitute one hour. Furthermore, what is prescribed in the aforementioned rubric applies only to the Office of that night. Whether the Nocturns can be separated from each other is denied.

[*Latin ed. p. 330*]

Thomas, in *Summa Angelica*, book 1, page 535, question 5. But Bus., Bon., page 3, number 13, and Salm., chapter 3, number 4, with Pell., Fill., and Viva, in the same place; at least, as Bus. and Viva say, if any nocturnal prayer is not more than three hours distant from another, according to the ancient rite, as D. Thomas reports; and the same is held by Thomas, Henry of St. Ignatius, Durand, etc., in the same place, who say that it is safer to observe the opposite, but that those who divide the nocturnal prayers because of a just necessity are not to be blamed. 168. The question is whether, if a great interruption occurs in the same hour or psalm, the entire hour must be repeated. Vasquez, Navarez, Suarez, Covarrubias, etc., in *Index Quartus*, book 4, number 1306, affirm this; because then the prescribed unity is removed. But Palatinus, book 2, page 3, number 3, Bonaventure, question 3, page 2, section 1, number 27, Lessius, chapter 37, number 57, chapter 2, doubt 19, Layman, chapter 1, number 6, Salm., chapter 3, number 3, with Villalobos, Pell, Macadam, and Croix, in the same place, with Sporer, Barbatus, Tamburrini, Arriaga, Quintilla, Tannery, *Diana Veteranorum*, and others, more probably and commonly deny this. The reason is that each psalm and each verse has a complete meaning and is sufficiently joined either by the intention of continuing or by the very recitation that is added. From this, they say there, Tamburrini, Gobius, Strozzi, in the same place, that he who begins the Matins today can complete it tomorrow without grave sin, even if he delays it without cause.

[*Latin ed. p. 331*]

The just causes for interrupting the Office are (as Croix states in book 4, paragraph 1307; Anacl. page 197, paragraph 54; and Salm. chapter 5, paragraph 4, with the gloss "Nav., Vill. etc.") any personal or external advantage that would be inconveniently delayed; also, piety or devotion, such as saying Mass, or obeying the commands of superiors, unless it is the confession of someone who would not willingly wait; or if you wish to do or note something, in order to remove distraction or worry, lest you forget; but (as Gobius rightly observes) this must not be done frequently. It is also

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permissible to briefly interrupt a prayer during the recitation of the Office, as Anacl. and Gobius, etc., state, apud Croix, 169, § 5. Let not the order of the hours be inverted without a just cause. But if this should happen, it will be only venial; because this order (at least outside the choir) is not under precept except secondarily, and as a circumstance of lesser importance. But if, through inadvertence or for a just cause, you change it, for example, to satisfy a friend or a sick person who wishes you to read with them, there will be no sin; nor if the later hours are said in the choir while you have not yet said the earlier ones; nor if, while reciting the Office, you realize that you have omitted something, or have not yet said the earlier hour; you should continue and make up for it *in fine*. Similarly, if a cause or necessity arises for saying the hours, you can say Prime, even if delayed.

[*Latin ed. p. 332*]

"Or, if it be for the sake of reading, or some similar purpose which is not within the reach of the hand." *V. Bon. q. 3. p. 4.* "170. Therefore, just causes for inverting the order of recitation are probably: 1. if you are invited by a friend to recite with him, as Anacl. p. 197, n. 57, and Suar., Pal., Bon., Pelliz., Bass. and Stoz. apud Croix l. 4, n. 1209: 2. if you do not have a breviary readily available, nor can you conveniently wait, as Pal., Gob. and Tamb. ibid.: 3. if you arrive late to the choir, with the office already begun, as Sanch., Laym. and Gob. ibid., and Anacl. l. c. And likewise, any reasonable cause excuses from venial sin, as Conc. p. 485, n. 5, Sal. c. 3, n. 8, with Suar., Pal., Trull., Reg. etc. And the same should be said if the order is inverted at the same hour; Salm. n. 10, with Suar. and Bon. The common opinion teaches that the inversion of the order is not a mortal sin, as testified by Salm. c. 3, n. 8, and Conc. p. 485, n. 5. For the order of the office is not subject to a precept. The Council says there, with Vasq. (contrary to Salm. l. c.), that one is not excused from a grave fault who frequently inverts the order; because this frequent inversion seems to be a grave fault in itself, according to what was said in n. 161, above. But this seems more likely to be denied, since it is the common opinion, as the Council itself asserts, that this order is not subject to a precept, as the recitation of the office on any given day is, as was said above.

[*Latin ed. p. 333*]

171. Question: Whether there is a grave obligation to recite the Divine Office in the choir, according to the prescribed order and at the appointed hours. The Council [Concil.] affirms this in volume 2, page 382, paragraph 15, and Salmeron [Salm.] in chapter 1, paragraph 11, along with Suarez, Azorín, Soto, Palencia, Fillón, Villanova, Rega, and Tamburrini, provided that the anticipation or postponement is significant and there is no legitimate cause for excuse. The reason is, firstly, because the canons repeatedly state that the hours are to be recited at the established hours and times, and

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secondly, because such an inversion involves a serious deformity. However, Cajetan [Caj.] in *De Horis*, Layman in book 8, treatise 1, chapter 3, paragraph 6, Sanchin [Sanch.], in *Consilia*, volume 2, book 7, chapter 2, doubt 42, paragraph 3, Bonaventure [Bon.] in *Disputationes*, book 1, question 3, page 3, paragraph 7, Gavotti [Gav.] in the rubrics, volume 2, chapter 5, paragraph 6, number 9, and the Council of Trull [Trull.], Tancrède [Tancr.], and the Council of Diana Veteranorum [Diana], as cited by Salmeron in the aforementioned passage, number 10, deny this. The reason is that such a circumstance of time or order does not pertain to the substance of the precept, but is rather a certain accidental ceremony. Both opinions are probable; but the second opinion seems more probable, because it is not certain that a grave precept has been imposed on this matter. Whether it is licit to celebrate Mass before reciting Matins. It is more probable that this is only venial, if done without a cause; as stated by the Council in volume 2, page 490, paragraph 11, and by others. See Vasquez [V.], *De Sacrificio Missae*, book 6, paragraph 347. 172. "6. That, unless a just cause excuses, they [the canonical hours] should be said at the time prescribed by law or custom, which now prevails, so that Matins and..."

[*Latin ed. p. 334*]

The praises, the complete nocturn, which are said in the church, approximately at the fourth hour, and according to Bonaventure, even at the third hour, should be recited: and in winter, it is said that they can be said at midday before sunset, according to Fill. According to the common opinion, and even though a privilege is granted to some to say them an hour before sunset. However, this is not a sign that it cannot be done without a privilege; because such things are often granted to remove scruples and doubts that arise from the variety of opinions. According to the same opinion, Bonaventure says, one does not sin if he says the first, third, sixth, and ninth hours two or three hours after sunrise; both because it is a moderate and customary postponement, and because the time prescribed by law has a great latitude, as testified by custom. However, it is venial to postpone the morning prayers without cause to the evening, or to say the vespers and complete nocturn before dinner without cause; because this is an unusual inversion. In Lent, the vespers can be read privately after dinner, since the rubric of the breviary on the fourth day of Lent, Ash Wednesday, does not impose the obligation. Nav., Sanch., Trull. dist. 18. n. 6. ». I said: without cause; because, if some other cause compels, according to Cajetan and others, all the hours can be said in the morning up to the vespers, inclusive. Finally, to avoid mortal sin, it is sufficient to say all the hours from midnight to the next midnight, except that...

[*Latin ed. p. 335*]

The Matins office may be anticipated the day before. (Note here propo-

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sition 35, condemned by Alexander VII, which states: "One office suffices to satisfy the double precept for the present day and for tomorrow.") However, if someone does not recite the hours within the specified time, they have indeed sinned, but are not obligated to recite them afterward; because they are a duty attached to the day. Although, according to some, restitution may be made to avoid the sin by repaying an equal amount. Moller, 3rd volume, 2nd part; also Major, Palud, Led, etc., apud Henry, book 12, chapter 13; Bonaventure, book 1, question 5, paragraph 2, number 5, where he states that this opinion is probable, and cites Suarez and Fillippo for it; but incorrectly, because these authors speak only of the first half of the year, or considering only natural law and excluding positive law. Quintilian, book 8, section 6, expresses the opposite opinion, calling it the more truthful one. See also Diaz, book 1, treatise 11, reason 24. (But I do not agree with this opinion. See above, book 3, number 66, where we stated that one is obligated to make restitution.)

173. In order for someone to lawfully anticipate or postpone the appointed time for reciting the hours, any useful or honest reason suffices, such as preparing for or attending a meeting, the imminent danger of an occupation or labor, greater devotion or rest, a more suitable time for studying, and the like. Thus, commonly, Concinius, book 2, page 48, number 3; Anacleto, page 209, number 72; Croix, book 4, number 1313; Lessius, book 2, chapter 37, number 79; and others.

[*Latin ed. p. 336*]

He also admits, for a just cause, the intervention of friends. However, the Council rightly states that it is not sufficient to excuse merely a greater convenience, without another honest motive, contrary to Pellizarius, who cites Sanchez in his defense, but not correctly; for Sanchez, in cons. l. q. c. 2, dub. 36, n. 3, admits this only for the sake of study, as also acquire Salmeron, c. 3, n. 14. The time of the hours begins from the point of midnight of the preceding day and ends at the point of midnight of the following day. Council, t. 2, p. 486, n. 3; Holzmüller, t. 1, p. 446, verse 6, and others commonly say. However, the small hours may lawfully be recited from the time of dawn until noon, as Salmeron, c. 3, n. 13, and Tournhem, t. 1, p. 633, verse 3, say, with the common opinion. The nona, however, can also be said after noon, as Croix states, l. 4, n. 1312. Indeed, according to others, even the sixth hour, as Tournhem asserts. However, rightly, the Council, p. 487, n. 4, and Salmeron, l. c., with Navar, reject the opinion of Molfino and others, who say that the small hours can be recited from the vespers of the preceding day; for this is nowhere received by custom. However, the vespers can be said from noon until midnight. Holzmüller, Tournhem, and Croix, l. c. 174. Matins can today, according to the custom already prescribed, be recited properly at the hour of vespers of the preceding day: thus, Salmeron, c. 2,

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n. 15, and Croix, l. 4, n. 1314, say, with the common opinion.

[*Latin ed. p. 337*]

Thomas, in the fifth question, article 28, section 1, states: "Concerning the ecclesiastical office and the solemnity of celebrating, the day begins from Vespers; therefore, if someone recites Matins after the aforementioned Vespers and Compline, this already pertains to the following day. According to the rite of the Old Law, transferred to the New, the ecclesiastical day and all feasts began from Vespers, as is evident from Leviticus 23:32, where it says: 'It is a sabbath of rest, and you shall afflict your souls beginning on the ninth day of the month. From evening until evening you shall celebrate your sabbaths.'" Here, question 1 asks: "Can Matins and Lauds be recited at the second hour after midday?" The first opinion affirms this, and this opinion is held by Sanchez in his Decrees, book 7, chapter 3, division 37, number 3, and by Diaz, volume 4, page 4, response 9 and 10, and is considered probable by Tambyle, volume 2, chapter 5, section 5, number 3, and is called highly probable by Salm, chapter 3, number 15, with the support of Trull, Quint, Led, Leand, and Antoninus of Spoleto. The reason given is that, as they say, Vespers are usually recited at that hour; therefore, since the ecclesiastical day begins with the first Vespers, Matins can also be recited at that time. However, a second opinion, which I consider more true (although I once adhered to the opposite), denies this, and this opinion is held by the Council of Trent, session 1, paragraph 48, number 7, and by Holzmüller, page 445, number 476, and by Tournhem, volume 1, page 633, and by Croix, volume 4, number 1314, along with Palafox, Fillon, Comiti, and Pell, who say that Matins cannot be recited unless the sun is closer to sunset than to midday.

[*Latin ed. p. 338*]

The reason is this: Matins, even according to the present custom, cannot be recited except at the hour of Vespers; and the hour of Vespers, as is commonly taught, is that which follows the ninth hour, which is the middle point between midday and sunset, and varies according to the different seasons. In summer, it is the fourth hour after midday; and in winter, it does not arrive until at least two hours and a quarter after midday. Therefore, unless the ninth hour has ended and the hour of Vespers has begun, Matins cannot be said. Nor is it valid to say that Vespers are commonly recited two hours after midday, so that the following ecclesiastical day has already begun. For even supposing that Vespers are commonly recited at that hour (which I still doubt, and the Council utterly denies), it does not necessarily follow that the following ecclesiastical day has begun: for custom may indeed have introduced the practice that Vespers may be recited at that hour without sin, just as they may lawfully be recited in the Quadragesima before midday; but it could not have introduced the practice that the ninth

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hour is the hour of Vespers. But what those who oppose us assume, namely, that custom has already introduced the following ecclesiastical day beginning at the second hour after midday, this would have to be proven; but since it has not yet been certainly proven, the law holds.

[*Latin ed. p. 339*]

which forbids the recitation of Matins before the beginning of the ecclesiastical day; which, as the adversaries themselves admit, does not begin until the hour of Vespers. Furthermore, Matins can be privately recited without impediment according to the Roman Directory, as is stated in Tourn. and Croix, II, chapters. Hence, our tables indicate that Matins and Lauds can be privately recited as follows: on January 1st, at 21 and 1/4 hours; from February 1st, at 21 hours; on February 25th, at 20 and 3/4 hours; from March 17th, at 20 and 1/2 hours; from April 11th, at 20 and 1/4 hours; on May 1st, at 20 hours; on June 1st, at 19 and 3/4 hours; on July 13th, at 20 hours; on August 16th, at 20 and 1/4 hours; on September 6th, at 20 and 1/2 hours; on September 28th, at 20 and 3/4 hours; on October 11th, at 21 hours; from November 16th, and on December 1st, at 21 and 1/4 hours. Question 2: Whether Matins for the Dead can be recited the day before. Regarding public recitation in the choir, it must be entirely denied, as the Council rightly states, Session I, chapter 2, page 386, paragraph 22, and this will become clear from what follows. A doubt arises regarding private recitation. Two opinions exist. The first opinion denies it, as will be shown by Holzm.

[*Latin ed. p. 340*]

"Privata" means "private."

"Hor. can. l. 1. p. 45o. n. 476. et Croix l. 6. p. 2. n. 2066. licet ipse prius in l. 4. n. 1292. oppositum tenuerat."

"It is permitted, as Croix states in book 6, page 2, number 2066, although he himself previously held the opposite view in book 4, number 1292."

"Citatur etiam pro hac prima sententia Gav.; sed Gavantus sect. 9. c. 2. n. 16. videtur loqui de sola recitatione in choro, prout loqui videtur decretum mox afferendum."

"Gavotti also cites this opinion; but Gavantus, in section 9, chapter 2, number 16, seems to speak only of the recitation in the choir, as the following decree seems to indicate."

"Hæc sententia nititur decreto S. C. rituum edito 1. sept. 1607., in quo (ut refert Croix l. 6. p. 2. n. 2055. decr. ibi n. 33.) sic dicitur: Matutinum definctorum pro generali eorum commemoratione recitandum est mane die secunda novembris, non vero pridie vesperi."

"This opinion is based on a decree of the Sacred Congregation of Rites, issued on September 1, 1607, in which (as Croix states in book 6, page 2, number 2055, decree number 33 therein) it is stated: 'The Matins for the

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Dead, for the general commemoration of the deceased, must be recited in the morning of the second day of November, and not the evening before.'"

"Secunda tamen sententia satis probabilis, quam tenent Tamb. dec. l. 2. c. 5. §. 5. n. 7., item Leand., Stoz. etc. ap. Croix l. 4. n. 1292. ac probabilem putat Viva l. c. q. 3. a... n. 2., affirmat."

"However, the second opinion is quite probable, and is held by Tamburrini in his Decrees, book 2, chapter 5, section 5, number 7, as well as by Leander, Strozzi, etc., as cited by Croix in book 4, number 1292, and is considered probable by Viva in his book, question 3, article 2, affirmation."

"Cum enim rubrica dicat: Dicto Benedicamus Domino, absolute incipit matutinum definctorum, probabiliter infertur quod sicut pridie undique ex consuetudine permittitur private recitare matutinum diei sequentis, ita etiam matutinum definctorum."

"For since the rubric states: 'After the words 'Benedicamus Domino,' the Matins for the Dead begin,' it is probably inferred that just as, everywhere on the day before, it is permitted by custom to recite privately the Matins of the following day, so too the Matins for the Dead."

"Ad decretum autem oppositum non immerito respondet Tamb. illud intelligi tantum pro choro, cum ibi S. C. prohibeat pridie matutinum cantari, quo verbo videtur prohiberi duntaxat publica recitatio, non autem privata."

"However, Tamburrini responds to the decree that seems to contradict this, and not without reason, that it should be understood only in reference to the choir, since there the Sacred Congregation prohibits the singing of Matins the day before, by which word it seems to prohibit only the public recitation, and not the private one."

"Et revera decretum relatum, ut habetur apud Meratum consultorem S. C."

"And indeed, the decree cited, as it is found in Merati, a consultant to the Sacred Congregation."

[*Latin ed. p. 341*]

In addition, in Gavotti, vol. 2, page 651, decree number 28 (which differs from what Croix presents, as mentioned above), it is stated: "The Matins for the Dead, for the general commemoration of the deceased, is forbidden to be sung the evening before the feast of All Saints, but it must be recited in the morning on the second of November, after Prime." On September 1, 1607, another similar decree is found in the aforementioned Merati, page 505, number 7, which was previously issued on May 23, 1603, where it is also forbidden to sing the Matins. Another similar decree is found in decree number 220, where it is expressly stated regarding the choir: "The Matins for the commemoration of all the faithful deceased cannot be recited in the choir on the day of the feast of the Saints after Compline, but the rubrics must be observed." On January 22, 1701. However, it is certain that the

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rubrics prescribe that the Matins of the day itself should be recited in the choir, and not in the evening of the preceding day.

Question 3: Whether those who recite the Matins in the evening with Prime may also recite the litanies. Gavant affirms this in section 6, chapter 16, number 6, and Arnaud and Lohn, in Croix, book 4, number 1292; and Gobius formerly held this opinion in volume 5, number 615. The reason is that the rubric joins the litanies with Prime; therefore, the verse "May the souls of the faithful" is omitted from Prime and is added at the end of the litanies, as stated in rubric title 3, number 3. Therefore, since they do what is...

[*Latin ed. p. 342*]

One accessory follows the principal office, namely the Litany, along with the Matins. However, the opposite is more commonly and truly held by Viva, Tamb., Holzm., and Croix in their collections, question preceding, and by Merat in the work cited above, page 467, number 5, along with Stoz., Halden, and Guyeto: and this opinion, Gobinet calls more probable in the later edition, translation 5, number 616. The reason is that it is not true that the Litany is joined with the Matins, but that it is something distinct. And this is evident, firstly, from the fact that they can be divided and are, in fact, separated, especially in those churches where the Litany is recited in the evening; secondly, because they are recited in place of attendance at the procession, which attendance is attached to those natural days; and therefore, if the Office of St. Mark is transferred, the Litany is not transferred, as is prescribed in the rubrics, title 3, number 3. By the way, it should be noted, as Salm. chapter 3, number 17, Viva, page 5, number 5, and others say, that it is not permissible to begin the office of the current day a little before midnight of the following day, and to continue it after midnight: for then the time for the prescribed office has already passed; for the office, being a daily task, is completed entirely within the day. 175. 7.º That they be recited devoutly and with internal attention, at least virtually, whether it be to God, or to the meaning of the words, or (as Cajetan says) to the words alone.

[*Latin ed. p. 343*]

Lessius rightly observes that this [point] is sufficient, provided that the mind is disposed to prayer and devotion to God. Therefore, confused attention (or general attention, as in Psalm [citation], with the cited Doctors) includes attention to God, even if it does not include attention to the words; otherwise, attention precisely to the words alone seems to differ in no way from external attention. Thus, commonly, contrary to Navarrus, Silvestrius, and Contenson; who require no internal attention, but only external attention, which excludes all action, and is compatible with internal distraction, even if the mind is voluntarily distracted in the meantime. This opinion,

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according to Layman and Lessius, is not improbable and is useful both for scrupulous individuals and for confessors, lest they command those who recite the hours of prayer without attention to make restitution of the fruits, partly because of the authority of the Doctors, and partly because it seems that this precept only prescribes certain material aspects of prayer and their external pronunciation (through which, as through hymns sung by the organ, the Church can obtain something from God), and that devotion, as the end of the precept, does not pertain externally to its substance. However, our opinion is more common and more probable. And it is proven: for without internal attention, there is no prayer; therefore, by the very fact that you are obligated under mortal sin to pray, you are also obligated under mortal sin to have some attention, as described above. Nor does it matter that the Church cannot, by itself,

[*Latin ed. p. 344*]

He can prescribe internal acts; for he can prescribe them because they are necessary for properly performing external acts, just as they are acts of virtue. In this way, just as he can prescribe confession, so too can he prescribe contrition. I said: with at least virtual internal attention; and if the actual is better, the virtual is nonetheless sufficient, as Bonaventure and others commonly say, flowing from the actual as long as it is not expressly or tacitly revoked by voluntary distraction or by an action which, with due attention, is impossible. Therefore, even if you are involuntarily distracted, you are still virtually attentive, firstly, if you intend in general to perform the customary office, or to praise God, or to fulfill your duty; secondly, if you recite the customary office with some confused apprehension and intention of performing the work. See Bonaventure, *De Modo Studendi*, dist. 1, q. 3, p. 3.

Firstly, he who doubts, because of a wandering of the mind, whether he has omitted something, may presume that he has said it if he has a probable conjecture that he has said it, because he finds himself *in fine*, for example, of a psalm, provided that he has said it from a book or from memory, and is not usually prone to error. (Idem, Salm. n. 12, with Sanch., Trull., Pal. etc.). They say that scrupulous individuals are obligated not to repeat in doubt; Salm., ibid., with AA. cited. As for others, they say that anyone having a just conjecture that he has said something...

[*Latin ed. p. 345*]

"One is not held to repeat anything, unless it is certain that he did not say it." Therefore, it is better if he does not repeat it, in order to avoid anxious habits and scruples, and so that the entire office may be completed without disturbance. Thus, Binsfeld, cap. 11, d. 13; Layman, c. 5.

"2. He who, through distraction, paid no attention to any of these things, has gravely sinned and, according to the common opinion, is held to repeat

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the hours, nor does he obtain the fruits of his work; because he did not perform the work commanded, which was to pray devoutly. Sotus, Navar, Regius, Ferus, Suarez, and Bona, lib. 1, cap. 7, v. 17, where, from Navar, it is added that he is excused from mortal sin who postpones the recitation of the hours or prepares himself in such a way that he realizes he will be overcome by sleep, for example, if he reserves the evening Compline to be said in bed, knowing that he is usually overcome by sleep at that time. However, some Doctors, cited above, rightly deny that repetition is necessary in that case, because the substance of the work has been completed without the circumstance of devotion. Much more, and with greater probability, these same Doctors deny the obligation of restitution; because one is only held to restitution by those who omitted the office, not by those who recited it distractedly. See Bona, lib. cit.; Lessius; Layman, and Daniel, tractatus de horis, r. 1 and 2; Escobara, t. 5, e. 4, cap. ult., n. 62 (and lib. 3, n. 66g.).

"3. To join together the recitation of the office..."

[*Latin ed. p. 346*]

Actions which notably do not impede, for example, dressing or washing, are venial if done without a cause; otherwise, they are sinful. Escob. l. c. c. 7. But he who, with internal attention, occupies himself with something incompatible, for example, in writing and reading, etc. (or if he attends to spectacles or to stories; Pal., Bon., Suar. etc. with Psalm 3. n. 28), sins gravely and does not fulfill the precept, and therefore is bound to make amends. Nav., Suar., Bon., Trull. l. c. 8. 176. Therefore, to fulfill an obligation, intention and attention are required. Regarding intention, it is certain that an actual, explicit intention is not required, but a virtual, implicit intention suffices, namely, if, according to custom, you take the breviary to fulfill the office as you are accustomed, as commonly taught by Sanch. cap. 1. dub. 28. with Nav., Conc. t. 2. p. 464. n. 2., Tourn. t. 1. p. 649., Bon. p. 2. §. 2. n. 22., Croix l. 4. n. 1326., Anacl. p. 195. n. 41. and others throughout. Indeed, Croix rightly adds n. 1329 that it is not necessary to renew the intention for each hour, even if an interruption occurs, even without a cause; because that resumption is made from the first intention: indeed, I believe that there is always present an actual intention of fulfilling the office. It is doubted whether he fulfills the obligation who recites without the intention of fulfilling it. The Council probably denies this, l. c. n. 5. with Nav., Azor., Silv.

[*Latin ed. p. 347*]

Prado, Med., Led., Rodr., etc., offer the following reasoning: Because the fulfillment of commandments necessarily requires the intention to fulfill them; for if you owe another Cento, and, being aware of the debt of Cento, you give him something, you are certainly not released from the debt. However, it is more probable that Suarez affirms this in 3rd part, distinct. 88, section 3 (although he is cited by some to the contrary), Pal. tr. 7th distinct.

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2nd part, page 3, number 5, 10, Sanch. decrees, volume 1, book 1, chapter 13, number 16, Less. chapter 37, number 59, Croix, number 1350, with the common opinion, Tourn., page 649, with Vasquez, Vallet, and Pontas, Salm., chapter 3, number 24, with Trull, Tamburrini, Pellizzari, Garcia, Henry, etc. For, although it is certain that someone sins because of the will not to fulfill the commandment, nevertheless, he actually fulfills it. The reason is that he who spontaneously fulfills a commanded act, truly executes that which is commanded by a superior; for, in fulfilling a commandment, it is not required that one have the intention of fulfilling, but it suffices that one actually perform the commandment. The objection of equality does not hold: for it is answered, following Suarez, that where the obligation depends on one's own will, the debtor can well impose that obligation anew upon himself, and, notwithstanding the solution of the debt, remain obligated; but where the obligation of the office depends on the will of the Church, the cleric cannot spontaneously impose it upon himself; therefore, while he fulfills it, he cannot will not to fulfill it. Regarding attention, this can be...

[*Latin ed. p. 348*]

External and internal. An external act is considered when an action that is incompatible with internal attention is performed, such as talking, writing, attentively listening to others speaking, dressing quickly, or performing a task with great concentration. Conversely, Croix states in book 4, chapter 1336, that if an action does not require great mental effort, and if there is some difficulty in paying attention while performing that action, it can be compensated for by greater attention. On the other hand, it is well understood that one fulfills their duty sufficiently when they perform an action that is compatible with internal attention, such as walking, washing oneself, dressing without undue haste (although priests are indeed obligated to pray while putting on their sacred vestments); also, gathering herbs, flowers, or grapes, preparing a fire, making a bed, combing one's hair, looking at a hill, a river, etc.; thus, in common with B. de B., book 2, page 2, section 2, number 12, and with Nav., Suar., Fill., etc., Tourn., volume 1, page 646, Con., volume 2, page 460, number 7, and Croix, number 1337, and with Nav. and Gob. The same is stated by Sanch. in the same place, regarding similar actions that are not performed very hastily. However, Croix, in the aforementioned place, does not permit adapting a pen for writing; but this is not undeservedly permitted there by Nav., Caj., and Beja, if one can maintain their attention in doing so. Indeed, Bon. rightly points out in the same place that some actions are distracting with respect to one person, but not with respect to another. Generally, it is permitted

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during recitation.

[*Latin ed. p. 349*]

It is necessary to perform the actions required for the recitation itself, such as seeking out the Psalms, readings, etc., while reciting memoriter, as Croix states in his work, citing Sanch., Nav., Silv., and Gob. Similarly, one fulfills the obligation if reciting while others are chattering, singing, etc.; provided that one does not seriously apply one's mind to these distractions, as Croix states in number 1538. Furthermore, Sotus, Nav., Tol., Val., Reg., Diana, and Gob. note, apud eundem Croix in number 1539, that if one performs some external action and does not notice that it impedes internal attention, one is not required to repeat it afterward. However, this must be understood if the external action is, in itself, compatible with internal attention. Furthermore, Pal. d. 2. p. 4. n. 6. and Bon. d. 1. q. 3. p. 5. n. 6., along with others, as cited by Croix in his work, state that one is not excused, at least from venial sin, who would recite the Office without any necessity in a place exposed to distractions, such as a forum or a street. Indeed, Bon., citing Nav., Suar., Molf., etc., from the Council of Basel, session 21, adds that one exposes oneself to the danger of not fulfilling the precept; unless that person (I would add) makes a great effort to focus the mind on the recitation. It is most probable that one fulfills the obligation if one recites while hearing Mass, as stated in Conc. t. 2. p. 462. n. 10., citing Bus., Suar., Pal., and the common opinion. See lib. 3. n. 309. If someone is troubled by sleep, but resists it so that he pronounces his part and clearly hears the verses of the other part, he fulfills the obligation, as Sanch. cons. l. 7. states.

[*Latin ed. p. 350*]

c. 2. Question 33, n. 1. With Navar and Leander, 2. p. q. 14, and with many theologians. However, Sanchez, with the aforementioned Navar, states that one is not excused from venial sin; provided, that it is understood that the recitation can be postponed to a more opportune time. Internal attention is maintained when one attends to the words, to the meaning, and to God. Attention to God is indeed the most perfect; namely, when the mind is raised to God by meditating, for example, on divine goodness, justice, etc., or on the mysteries of the Passion, as the Council states on page 457, n. 3; Tourn. on page 651; and Salm. chapter 3, n. 25; Croix, book 4, n. 1533. With regard to common prayers, such as those of the Blessed Virgin Mary or the saints (as the Council and Croix state): because these have the closest relation to God. They also say that the examination of conscience should be reduced to this. But I do not agree with this. Attention to the meaning is maintained when one attends to understanding the intelligence of the words. Finally, attention to the words is maintained when one attends to pronouncing them correctly, so that an error is not made by mutilating, transposing, etc. And although this is the least perfect of all, it is nevertheless sufficient, as

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Less. chapter 37, n. 69 and 70; Salm., in the aforementioned place; Anacl., page 199, n. 42; Croix, book 4, n. 1344; Holzm., page 218, n. 270; Laym., chapter 5, n. 9, and others commonly state; whatever Tourn. may say, who states that attention to the words also requires attention.

[*Latin ed. p. 351*]

To God. But Layman and Salmerius say that attention to the words, together with a general intention of pleasing God, is sufficient; and this is clearly taught by D. Thomas, 4th Dist., 15th Question, 4th Article, 5th Solution, where he says: "First, there is attention to the words by which we pray, then to the prayer itself..." And whatever of these attentions is present, the prayer is not to be considered inattentive; hence, even those who do not understand the words of the prayer can be attentive in prayer. And Croix rightly adds, in n. 1344, that attention to each individual word is not required, but that moral and general attention is sufficient, whereby one takes care to say all things well with the intention of praying.

177. Question 1: Whether internal attention is necessary to fulfill the obligation of the divine office. There is a threefold opinion on this matter. The first, which is more common and more probable, affirms that it is absolutely necessary, and this is held by Sanch., cons., vol. 2, book 7, chapter 2, doubt 28; Soto, l. 10, q. 5, a. 5, conclusion 6; Cajetan, in 2. 2, q. 83, a. 13; Savonarola, Horæ, n. 19; Azor., p. 1, l. 10, c. 16, q. 6; Ronc., c. 9; Wigand, tr. 10, ex. 5, q. 7; Anacl., de hor., c., p. 195, n. 43; Conc., vol. 2, p. 443, n. 26; who thoroughly and learnedly defend this opinion, along with Navarrus, Gavotti, Vallius, Maldonato, Ledo, Medina, and countless others. However, other authors approve of this first opinion from the words "Dolentes, de celebr. missae." But from this text, Concinius, with Suarez, wisely says that this is not well.

[*Latin ed. p. 352*]

The judgment is to be approved. For there is nothing said there concerning internal attention, but only external observance is prescribed, contrary to the conversations of ecclesiastics with laymen in the choir, which conversations gave rise to the construction of this canon. Therefore, the pontiff commanded that those reciting the nocturnal and diurnal office, as far as God has granted them, should celebrate and perform it diligently and devoutly. And explaining this canon, St. Antoninus, in book 3, title 13, chapter 4, paragraph 7, said: "We command that each one should say his hours, both day and night. We do not place intention and devotion in the precept, but we have left it to the grace of God, according to what He Himself wills to give: and hold this understanding because it is more merciful, and because the Church ought not to lay a trap for anyone." Others approve it from proposition 14, condemned by Alexander VII, which said: "He who makes a confession voluntarily, without any necessity, fulfills the precept of the Church." Therefore (they infer), it is permissible for

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the Church to prescribe internal acts. But neither is the aforementioned judgment sufficiently proven by this reason; for it does not prove that the Church prescribes internal acts, but only that it prescribes a valid confession, as Christ commanded. Therefore, the stronger reason is that without internal attention, prayer is not constituted, which is universally defined as the elevation of the mind to God. Therefore, although the Church has not imposed a special, positive precept concerning internal attention,

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Internal devotion, however, having prescribed the recitation of the Divine Office as a manner of prayer to worship God, has taught true prayer, which, without internal attention, is not true prayer: nor is God worshipped by the mere external recitation by those who voluntarily distract themselves; indeed, God laments concerning these: "This people honoureth me with their lips: but their heart is far from me." Matthew 15. And conversely, in John 4, it is said: "But the hour cometh and now is, when the true adorers shall adore the Father in spirit and in truth. For the Father also seeketh such to adore him."

The second opinion, held by Salm. tr. 16, c. 3, n. 31, seeks to reconcile the aforementioned first opinion with the third, which holds (as we shall say below) that internal attention is not required, and states that, assuming on the one hand that attention to the mere words is sufficient to fulfill the Office, and assuming on the other hand that at least some attention to the words, with the mind (at least in a general or confused way) worshipping God, is absolutely required for proper recitation, then he will be praying who attends to the words in such a manner, since it is not impossible for someone to be distracted by other things and at the same time attend to the words being spoken correctly: therefore, he will always fulfill his duty properly, and will not retract, through contrary will, the intention of attending. But according to the first opinion, which requires formal and explicit attention, the Council rightly says that he who voluntarily distracts himself can in no way...

[*Latin ed. p. 354*]

One must attend to the proper delivery of words; otherwise, one's attention will be so weak that it will never reach the due measure of attention. The third opinion holds that, in order to substantially fulfill the precept of an office, internal attention is not required, but that the intention of reciting with external attention suffices. This is defended by Lugo, *de euch.*, d. 22, n. 25, with Palud., Ang., Med., Durando, Rosell; also by the Council of Trent, *de sacram.*, 3rd session, p. q. 83, n. 291; by Silvest., *v. Missa*, 2nd q., 6; by Ang., *v. Horæ*, n. 17; by Macad., *tr.* 21, doc. 5; by Gob., *tr.* 5, n. 821, q. 5; by Croix, *lib.* 4, n. 1342; by Tamb., *lib.* 4, cap. 2, § 1, n. 19; by Elb., *tom.* 2, p. 541, n. 403, and is called probable by Less., *lib.* 2, cap.

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37, n. 63; by Laym., *lib.* 4, *tr.* 1, c. 5, n. 10; by Spor., *de sacram.*, a n. 75; by Pelliz., *t.* 2, *tr.* 10, cap. 6, n. 17; by Viva, *de rest.*, q. 7, art. 9, n. 6; by Zach., *lib.* 4, n. 1341 and 1342, and by many others; and this also is expressly held by St. Antoninus, as will be stated below. The reason is that, as defined by St. John Damascene, *lib.* 3, *de fid. orthod.*, c. 24, and by St. Thomas, *in 4. dist.*, 15, q. 4, art. 2, q. 1, n. 1, prayer is a fitting petition made to God. However, it does not contradict that our petitions can be presented to God by us, even with actual mental wandering; just as if someone were to recite a prayer composed for a certain purpose before a king.

[*Latin ed. p. 355*]

To obtain grace, he certainly would pray for it before the King, even if at that time his mind was distracted by other things. Thus, even when reciting the Divine Office, despite internal and voluntary distractions, one can still pray to God: for external attention, joined with the intention of reciting, makes the recitation of the hours, in substance, a true prayer. And thus, it cannot be denied that D. Anton. held the view, as cited above, in explaining the passage in chapter "Dolentes." The words of the Saint must be repeated here: "We command that each one say his hours day and night, but we do not impose intention and devotion in this precept, but we leave it to the grace of God, according to what He Himself wills to give; and you must hold this understanding because it is more merciful, and because the Church ought not to lay a trap for anyone." From these words, it is clear that the Saint did not merely express the understanding of the text as pertaining to external attention alone, but also intended to demonstrate, by the generally adduced reasoning, that the Church does not require internal attention. Indeed, D. Antoninus not only asserted that the Church does not command this internal attention, but then, in the same place, § 8, he taught that it cannot even be commanded; for there, after relating the teaching of D. Thomas, that attention in prayer should always remain, according to its power, he adds: "However, it is not required that intention..."

[*Latin ed. p. 356*]

Let him actually recite the entire prayer...; however, it is required that the one praying, knowingly, not distract his mind from the prayer; for this cannot be without mortal or venial sin. Then he explains that one would sin mortally when, through contempt for internal attention, he voluntarily distracts himself, or when he recites while also being externally distracted. His words are: "But if the distraction is noticed and occurs only according to the internal act, although it may be rash and grave, it is not mortal, unless through contempt; because the Church does not have the authority to judge purely internal acts: therefore, a minister of the Church, even if, while saying the prayer, he thinks of something else, does not seem to transgress the precept by reason of the nature of the act. But if the distraction of

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the mind is due to the fact that someone knowingly occupies himself in an external act which does not allow him to have attention, it seems to be mortal and directly contrary to the precept of the Church, concerning the celebration of the Mass, chapter *Dolentes*, where it is prescribed that the office be celebrated diligently and devoutly. This is not observed by those who, while occupied in an external act, knowingly withdraw their attention from themselves. Therefore, undoubtedly, St. Antoninus does not consider internal attention to be prescribed by the Church, nor to be of the essence of prayer, but rather that external attention suffices, together with the intention previously had of praying; for otherwise, if internal attention were of the essence..."

[*Latin ed. p. 357*]

Prayer, the Church ought not only to have prescribed, but even commanded. And this opinion appears to be clearly demonstrated by the same Saint Thomas, in the 4th part, distinct 15, question 5, article 2, solution 4, ad 3. question, where, at first glance, he seems to favor the opposing opinion, when he says: "It must be said that actual attention is required for prayer in some way, either to avoid transgression in that prayer which is commanded, or to merit in that which is not commanded." However, below, in the 2nd explanation, he clarifies that this actual attention, which is entirely necessary for prayer, is understood to be solely external attention. Indeed, his words are: "When someone, from intention, distracts his mind to other things while praying, then it is not without fault, especially if he is occupied with other things spontaneously which distract the mind, such as external works; and if the mind is drawn away to the contrary, then it will also be a mortal sin." Here, the Saint clearly distinguishes between a voluntary internal distraction, which he says is not without fault (namely, venial), and the fault that is in an external distraction incompatible with internal attention, and he says that this fault is mortal. And thus, in this passage, Saint Antoninus explains Saint Thomas, saying: "Therefore, Saint Thomas (4th part, distinct 15) says to you that in prayer, if someone spontaneously occupies himself with things that distract the mind, such as works..."

[*Latin ed. p. 358*]

Exterior actions, and if the mind is drawn away in the opposite direction, will also constitute a mortal sin: Saint Peter explains this, and says that, speaking of prayer, which is a human precept, that contrary action does not refer to prayer itself, because external good works are not contrary to prayer, but rather it refers to attention, namely, when one is externally occupied with something incompatible with the attention required for prayer. Therefore (as Saint Antoninus explains), the Angelic Doctor holds that prayer is only lacking when external distraction is added through an action incompatible with internal attention; and only then does he recognize a

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mortal sin in the transgression of the precept of prayer.

Reason 2: Because if internal attention were necessarily required for the essence of prayer, he who is involuntarily distracted would not even fulfill his duty. It is certainly known to all that involuntary distraction does not in the least impede the fulfillment of the duty of reciting prayers, as is taught in *Summa Theologica*, 2-2, question 83, article 13, ad 3: "A distraction of the mind which occurs unintentionally does not remove the effect." This is also conceded by the Fathers of the first opinion, but they say that he who voluntarily distracts himself, actually revokes the first attention, and therefore does not fulfill his duty, since he no longer prays; but he who is involuntarily distracted remains virtually attentive, and therefore prays and fulfills his duty. I...

[*Latin ed. p. 359*]

Nevertheless, I confess that I have never been able to understand how attention can virtually persevere in one who is distracted, even if involuntarily. I understand perfectly well that intention, when it pertains to the will, once it has been taken and is not retracted, virtually perseveres in the effect or in the means undertaken, because these means proceed from that intention; but I do not understand how it can be said that one is virtually attentive to prayer when his mind is occupied elsewhere. It is rightly said that he who, after having taken the intention to attend and not retracting it, is involuntarily distracted, wills to attend; but it cannot be said that he attends when he is completely absent elsewhere: just as it is repugnant to say that one virtually understands what he is reading, when he does not actually understand it, even if he had the intention of understanding; so it is repugnant to say that one virtually attends when he does not actually attend. Therefore, Lugo rightly concludes, number 39, that if internal attention were required for prayer, he who is involuntarily distracted would not effectively, but only affectively, pray. Therefore, he truly prays only to the extent that he joins the internal intention previously had of praying with external attention. Reason 3: because the priest administering the last rites (whose form is supplicationary) with the intention of doing what the Church does,

[*Latin ed. p. 360*]

And if the mind is distracted at that moment, it contributes powerfully; therefore, without internal attention, it is possible to validly confer the sacrament of prayer. To this difficult objection, the proponents of the first opinion respond in various ways. Some, citing the Council, say that in that case, the sacrament would not be validly conferred; because then the priest would have no intention, nor any attention: for when one is distracted by something else, both are actively retracted. But this response seems too weak; because, for the universal reason of sacraments, only the proper

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pronouncement of the formula over the proper matter by a minister having the power is required, with the intention of doing what the Church does, according to that well-known saying of St. Augustine, tractate 80 on John: "The word is added to the element, and it becomes a sacrament." And it is more evident from the Florentine Council, in the decree of faith of Eugene IV, § V, where it was decreed: "All these sacraments are perfected by three things, namely, by things, as the matter, by words, as the form, and by the person of the minister conferring the sacrament with the intention of doing what the Church does. Therefore, when all these things are present, it must be said that the minister pronouncing the words of the formula with due intention, certainly validly confers the sacrament of extreme unction. Otherwise, the Council responds that in the sacraments, God elevates the words of the minister, whatever perverse intention he may have, in order to confer grace: but

[*Latin ed. p. 361*]

To this, Lugo objects in number 3, stating that if attention were to be taken away from the essence of prayer, prayer itself would be lacking, and consequently, the form of the sacrament of extreme unction, which is supplication, would vanish. The Council replies that in that case, although moral prayer may be destroyed, the physical aspect remains, namely, the external utterance of words, which, according to the opinion of some, is said to be sufficient. However, it states that to fulfill the obligation of the office, it is required that the prayer be moral, and that for the prayer to be moral, essential attention is required. But to this, it is responded in the first place that the aforementioned statement of those is improbable, as we will demonstrate in book 6, number 23, where we will say that it is absolutely necessary for the validity of the sacraments that the minister at least intends to do what the Church does. Secondly, it is asked: is the attention about the essence of prayer taken in a general sense, or only of moral prayer? If you say that it is about the essence of moral prayer, and not of physical prayer, it is granted; because such a prayer would not be meritorious, but would be satisfying, since it would be a true prayer; therefore, one reciting the office voluntarily distracted would indeed lack merit, but would already be satisfying, since the Church commands prayer absolutely, and not necessarily meritorious prayer; at least, it is not certain that she commands the latter. If, however, you say that attention is about the essence of any kind of prayer, then it must be conceded that prayer without attention is neither moral.

[*Latin ed. p. 362*]

It cannot be said that prayer is a matter of mere physical utterance; for if attention is essential to the very nature of any prayer, a prayer without attention will be nothing more than the mere recitation of words, and will not be a prayer, neither moral nor physical, since it lacks the essential ele-

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ment of prayer. Therefore, since the essence of the form of the sacrament of extreme unction requires it to be a supplication, according to the words of St. James, "Presbyters pray over the sick," the sacrament will be null if the priest recites the form without attention. Indeed, since the form of this sacrament must be a true prayer, and since a prayer without attention is not a prayer, God cannot bestow the grace of the sacrament unless the form is suitable; for although God can effect that which is not suitable for producing a certain effect, to produce that effect, He cannot effect that which is not a prayer, to be a prayer. Nevertheless, despite these considerations, the first opinion appears more probable, at least on account of external authority, and it should certainly be followed for greater safety; but the second opinion also appears sufficiently probable, both on account of the authority of the Doctors, which should not be disregarded, and on account of reasons based on solid foundations; at least because it is not certain that there is a precept regarding internal attention in the recitation of the Divine Office. Therefore, I would not dare to condemn a beneficiary for restitution.

[*Latin ed. p. 363*]

He who, in good faith, had recited the Office with voluntary distraction, and had likewise, in good faith, received the fruits thereof, as is excused by Croix, book 4, number 1215, and also by Sotus, Tollet, Azorín, Medina, Garcia, Gobinus, etc., as stated in the aforementioned book 3, number 66g. Furthermore, in order to dispel scruples and to lighten the minds of those who recite the hours, it is very important to note what the most learned Doctors, still adherents of the first opinion, commonly teach, namely, that in order for someone to be considered to have not fulfilled his duty, it is not enough that he voluntarily distract himself, but also that he be fully aware that he is distracting himself; for otherwise, even if he spontaneously diverts himself, he is not spontaneously diverting himself from the recitation. Thus, Sancratius, chapter 1, doubt 28, numbers 10 and 11, with Suarez, Navarrus, Sotus, and Arminius, in *Conciliaria*, page 451; Croix, book 4, number 1346, with Fillon, Gobinus, and Salmeron, chapter 3, number 42; and Cajetan, *Summa* on the Hours, where he says: "If someone notices that he is thinking of extraneous things, but does not notice that he is being distracted from the divine Office, although he may be voluntarily meditating on those things, his mind is not, for that reason, voluntarily being distracted from the Office." Indeed, as the Council states, it is impossible for all men to avoid all distractions, especially those who are studious; for such exercises are of the intellect, which, being a necessary faculty, is so affected by constant occupations that, as it were, with weights added, it is thrown into its own controversies. Hence...

[*Latin ed. p. 364*]

It is commonly stated by Sanchez, n. 15, Salm, n. 43, with Navarez, Ca-

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jetan, and Croix, n. 1346, and others, that if someone, noticing that he is being distracted, exerts a moderate effort to pay attention, he does not, in any way, sin. Sanchez adds, n. 10, with Gersón, Margarito, and many others, that it is not necessary for a person to always strive with total diligence, but that some wandering of the mind to refresh the head can be tolerated. It is said: "to fully pay attention"; because although someone, while reciting, might partially notice a distraction and venially sin, he still substantially fulfills his duty, as long as the initial attention or intention to pay attention always perseveres until it is withdrawn with full attention: for the intention, conceived beforehand with full deliberation, does not cease to exist unless it is retracted with another full attention. Thus, Sanchez, Salm, Croix, and the Council, decrees, chapters. From this, Sanchez infers, n. 14, with Navarez and others, that the one reciting would gravely sin, according to the meaning of the first sentence, when he deviates out of contempt or deliberately. Therefore (thus concludes Cajetan, in the same place), as long as it is not clearly established to them that they have changed their purpose, or that they have been wandering, aware and knowing about other things, they can believe that they have fulfilled their obligation. Croix adds, with Navarez, that those who occupy themselves in thinking whether they are paying attention or not are not acting correctly; for that very act is a distraction.

[*Latin ed. p. 365*]

The remedies, however, which are more suitable for repelling distractions of the mind are: 1. to form, at the beginning, the intention of praising God; 2. to renew the intention, saying "Gloria Patri" or at the beginning of any psalm; 3. to represent to oneself some mystery of the Passion; 4. to diligently observe one's feelings; and other similar things, which can be seen in Anacl. and Elb. II. chapters. For those who are scrupulous, Croix, in book 4, number 1350 and 1351, notes that they should not be prevented from reciting the prayers unless they are certain that the intention of praying has changed. Furthermore, Gob., ibid., number 1354, adds that if someone suffers grave anxieties, it may sometimes be necessary to forbid them from reciting the Divine Office until they seem able to recite it without such great discomfort, since great discomfort excuses them from the precepts of the Church. 178. Question: Here, 2. Does one commit a mortal sin who recites the hours while being in a state of mortal sin? Answer: Ap. Sanch., book 7, chapter 2, doubt 9, absolutely affirms; because he performs an act of devotion, although he says that he is fulfilling a precept. Others, as Med. and Led., apud eum, Sanch., say that he then commits a mortal sin when he has an actual intention of sinning; because then he inflicts great irreverence upon God, at the very time that he asks for a benefit from God, intending to offend Him. However, Contin., volume 1, page 653, at the end, believes that if the one reciting has a desire to depart from sin, then he is already

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acting piously. *Lrg. Theol. Mor. T. VII.*

[*Latin ed. p. 366*]

He prays and fulfills his duty; but if he has an actual intention of sinning, at the very least he says that he doubts whether he fulfills his duty, since he doubts whether he is truly praying. However, the more truthful and common opinion is that he does fulfill his duty and does not commit a mortal sin, as Sanch. n. 3, with Nav. and Croix, l. 4, n. 1348, and Cord. Ratio, hold, because, on the one hand, the recitation of the office is not an act of the sacred order, although it is imposed by regulations in the sacred matters; on the other hand, although he may obtain nothing for himself, since he prays in the name of the Church, he can certainly obtain graces for others. But that he should pray in the name of the Church with the intention of sinning does not seem to be such irreverence as to merit a mortal sin, although he may not be excused from a venial sin, as Croix says with Cord. Furthermore, I would not dare to condemn anyone for any sin based on the devotion of one who is praying and who has an actual intention of sinning. Otherwise, we would be forced to urge such individuals to abstain from all prayer.

179. Question 3: Whether it is licit to recite the office in impure places. Some, as Sot. de just. l. 10. q. 5. a. 4. in fin., Viva q. 3. a. 5. n. 5., Anacl. p. 191. n. 67., Conc. p. 491. n. 1. and Spor. p. 82. n. 148, with Tamb. and Gob., hold that it is venial, if done without a cause; because it seems to lack some degree of reverence. Others, as Sanch. cons. l. 7. c. 2. dub. 44. n. 4., Salm. c. 3. n. 11, with...

[*Latin ed. p. 367*]

Trull., Angl., Leand. et Diana, page 10, title 11, canon 33, with Escobedo, Fausto, etc., acknowledge no fault in this matter; because, since God is everywhere, there is no irreverence in praying to Him in any place. Otherwise, it would not even be permissible in any way to pray in mind or voice in an indecent place: which no one would say; indeed, the Apostle, 1 Timothy 2:8, says: "I will therefore that men pray in every place, lifting up pure hands, without anger and contention."

Question 4: Whether it is a fault not to observe the posture in the recitation of the Office, namely, standing, kneeling, according to the rubric. Some deny it, as Psalm 3, number 11, and Sporer, page 82, number 149, with Zerolo; because (as they say) it is not prescribed, but advised and ordered for the sake of greater devotion. And the same opinion is held by Tolosa, Bonaventure, and Fillon, apud Croix, book 4, number 1321, who says that in this case, one can more easily sin through scandal than through omission. But it is more probable that Viva, question 3, article 5, number 7, and Tournhem, page 646, question 2, affirm; because it is prescribed in the rubric; although the omission does not exceed a venial sin, as Navarrus and Viva, in the same place, say, since this rubric is only directive. This, however, is

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understood of the choir: for outside the choir, the aforementioned authors commonly teach (whatever some may say) that there is no fault in omitting the prescribed posture; although it is praiseworthy to observe it. The Council, page 491, number 2, and Viva, in the same place, number 6, hold that one cannot be excused for a venial sin if, without cause, he recited the Office lying down in bed.

[*Latin ed. p. 368*]

THIRD DOUBT. WHAT CLERGYMEN MAY DO CONCERNING THE DISPOSITION OF THE FRUITS OF THEIR BENEFICES.

180. Are beneficiaries lords of the fruits of their benefices with regard to what is necessary for their sustenance?

181. And with regard to what is not necessary? See also book 3, number 491.

182. What should be noted concerning the proper sustenance of clergy?

183. What quantity in superfluous expenses is considered excessive?

184. What are clergy obliged to expend for pious uses?

185. What is to be understood by the term "pious uses"?

186. See resolutions.

187. May clergy make a will concerning the fruits of their benefice? Concerning the alienation of ecclesiastical goods, note: 1.° Concerning the penalties for those who alienate the goods of the Church. 2.° May they be alienated, if such power has been granted by the donor? 3.° What is meant by the term "ecclesiastical goods"? 4.° What if the alienation is forbidden by the donor? And what are the just causes for alienation? 5.° What formalities are required? And what if the cause is lacking? 6.° What goods may be alienated without formalities, and in what cases? 7.° What about the leasing of ecclesiastical goods?

180. » R ESP. 1.° Clergy who are beneficiaries, with regard to that part of the ecclesiastical goods which is necessary for their proper sustenance and dignity, are considered to be the lords thereof, so that they may freely dispose of them. Where Navarrus rightly notes that this proper sustenance and dignity have a wide scope and their own degrees; therefore,

[*Latin ed. p. 369*]

"If the minimum price for adequate sustenance is 300 florins, the average 400 florins, and the maximum 500 florins, then the cleric, even if he lives on the minimum, is free to dispose of the remainder as he wishes. Thus, it is commonly held; because he acquired this as a stipend for sustenance, as a reward for the work he has performed. (V. l. 3. n. 491. v. 3. Ibid.)"

"181. "Resp. 2. "It is also more probable, contrary to Navarrus and many canonists, that non-regular beneficiaries (for it is different in the case of regulars, as Lugo states in t. 1. d. 4. s. 1. n. 2) are not absolute masters of all

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their revenues, and therefore, even if they expend them on profane uses, they are not obligated to make restitution. This opinion is more common among the later authorities, as found in Binsfeld, Maldonatus, and Bona in d. 3. p. 1, drawing from the Summa Theologica, Sotus, Molin, etc.; firstly, because they produce fruit from their holdings, as the Council of Trent, session 24, chapter 12, states; and secondly, because otherwise they could not transfer ownership of the fruits to others (for uses other than pious ones), and all their donations and contracts would be invalid and, as such, would be declared invalid by a judge, and the goods would have to be restored to the Church; which, since it has never happened, should not be presumed to be the case. Lugo d. 4. n. 1. (But see the statements in l. 3. n. 491.)"

"Nevertheless, it is commonly held that non-regular beneficiaries should expend any surplus of their revenues, beyond what is necessary for adequate sustenance, on pious purposes, so much so that Lugo in d. 4. n. 10 states that the opinion of Hurtado is quite singular."

[*Latin ed. p. 370*]

And [the opinions of] Hurt and Dian, those who say that they fulfill [their duty] if, (having set aside grave necessities), they contribute to common necessities one-fourth of ecclesiastical revenues, or certainly half of that which remains for proper support. See Lugo, *loco citato*, where, citing many authors in his favor, he shows that Tol, Mol, and Bon are wrongly cited to the contrary, indeed that Hurt and Dian themselves did not persist in that opinion, and that it is not supported by any authority or reason; and finally, he proves his own point, especially from the Council of Trent, Session 21, chapter 5, concerning reform, and shows that this obligation arises from a law that is not only human but also divine and natural. See also Bon, *loco citato*, page 2. (See book 3, number 491, verse 4, *Major*.) Furthermore, the proper support of a cleric is considered to be that which is necessary for the support of his state and family, according to the condition of his state, his rank, his dignity, his quality, and the region in which he lives. See Bon, *loco citato*, Mol, Laym, Lugo, etc. (See book 3, number 491, question 2, *o*.) "Therefore, these cases are resolved: 182. " 1. *o* Proper support is not equal with respect to all; because a bishop requires more than a dean, a dean more than a canon, a canon in a principal church more than a parish priest, a weak and frail person more than a robust and healthy one, and what is sufficient in one place is not sufficient in another. Therefore, attention must be paid to the needs of others, for the sake of a troubled conscience, in the same [place]."

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Furthermore, it does not impede the fact that a beneficiary has risen from a humble station, so that he may make expenses suitable to his position, as

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Lugo teaches in *loco citato*, chapter 5. Bann. *loco citato*, number 8.

Secondly, by the term "congruous sustenance" is also understood due hospitality, not only to poor traveling pilgrims (who are especially commended to clerics by the Council of Trent), but also to those within the city. Lugo, number 66.

Thirdly, debts which a cleric has contracted for his own sustenance, or for a pious cause, he may repay from ecclesiastical revenues; not, however, those which he contracted before obtaining the benefice, unless he is poor: *ibidem*, number 67.

Fourthly, a cleric may lawfully support his relatives with superfluous goods, if they do not otherwise have what their parents either do not wish to provide, or are unable to provide, for their studies: *ibidem* and Bonaventure, part 2, number 13.

Fifthly, if he has poor sisters or illegitimate sons, it is permissible to provide for them from the fruits of the benefice, if they cannot be provided for otherwise (indeed, he is obligated to provide for his sister on the part of her father, as Navarrus and Burgensis, with Croix, state in book 4, number 1357; a fortiori, he is obligated to support his mother, Croix, *ibidem*): because he owes them sustenance by natural right, in the place of the dowry. Mol., Binsfeld, etc.

However, care must be taken lest he either conspicuously elevate them above their station, or provide for these [sons] in a manner that is not legitimate; although a nobleman may give more than...

[*Latin ed. p. 372*]

Another of the lowest sort. See Layman, book 4, treatise 2, chapter 3, paragraph 4. "183." "6º If he spends superfluous goods on profane uses, for example, on hunting, dogs, horses, parasites, games, luxury, or on enriching friends and relatives, etc. (understand that we are speaking of a notable quantity, in the general sense of prodigality, which is far greater than in the general sense of theft; Palearius, apud Croix, book 4, paragraph 1358, requires one-third or one-quarter; the Council requires one-quarter; but Croix, with Lugo and Haun, condemn this and say that one-twentieth is a serious matter), he certainly sins gravely, but he is not bound to restitution; because he is the owner of the fruits, and consequently, neither is he who received them. Thus, contrary to Navarret, etc., commonly held by the Doctors; see Trid., session 21, chapter 1; Azorín, volume 2, book 7, chapter 8, question 2; Layman, book 4, treatise 2, chapter 3, paragraph 4; Bonaventure, book 4, part 2, paragraph 9, and part 4, paragraph 1, etc. (See book 3, paragraph 492.)"

Queries: 1º What must be spent on pious uses? "184."

Answer: All things that have been received, either from the Church or from others as administrators of divine worship; but not those that have

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not been offered for divine worship, or that have already been spent by the Church for divine worship. Lugo, book 4. The reason is that the former have an attached religious obligation, the latter do not; or, if they did have it, that obligation has already been extinguished by being spent on pious uses.

[*Latin ed. p. 373*]

Observe here the teaching of D. Th. 2. 2. q. 185, art. 5, where it is said: "Not all the goods of the clergy are to be given to the poor, unless perhaps in necessity, in which case, for the redemption of captives and in other necessities of the poor, even those things dedicated to divine worship may be diverted, as St. Ambrose says; and in such a necessity, a cleric would sin if he wished to live off the goods of the Church, provided he had patrimonial possessions..." V. said, book 3, n. 491, question 5. Furthermore, the Holy Doctor adds in n. 4: "If there is no pressing necessity of the poor, it is permissible to purchase property with the surplus goods, or to reserve them for the use of the Church." V. said, book 3, n. 491. "Also, a cleric may spend patrimonial goods, and all that he acquires by inheritance, industry, donation, or in any other way, as laymen do, while living off the revenues of his benefice. Also, things that are quasi-patrimonial, that is, those which clerics acquire, not as revenues of a benefice, but as stipends for some clerical office, for example, for a congregation, for a Mass, for a funeral, for the office for the dead, for the administration of sacraments, for anniversaries, etc. Sanch., Lugo, loc. cit., n. 23; Bon., p. 2, n. 16. (And this is called, with good reason, by Sanch., cons., book 2, chapter 2, dist. 45, n. 4.) contrary to Innocent, with Soto, Nav., Host., Silv., Panorm., and others commonly." V. said, book 3, n. 491.

[*Latin ed. p. 374*]

2. It is more probable that distributions or "presents," as they are called, which are given to beneficiaries upon their presence in the choir, can be applied to secular uses. Thus, Silv., Lugo, n. 24; Bon., p. 2, n. 17, against Sanch., etc. (See book 3, n. 491).

3. The fruits which are given for a chaplaincy or vicarage, which are not conferred but are removable at the will of the grantor, can be applied to secular uses; because they are not fruits of a benefice (for this is conferred through canonical collation), but rather are quasi-patrimonial goods. Lugo, n. 28.

4. It is also probable that a pensioner may lawfully apply his pension to secular uses; because the Pope draws it from the revenues of a benefice and gives it to another who does not hold that benefice. Lugo, loc. cit., against Bon., etc. It is different for one who holds a benefice in commendam; because he is substituted in the place of the beneficiary, ibid. (See dictionary, book 3, n. 491, question 6).

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5. The portion which a cleric lawfully retains for himself through prudent living, from his due sustenance, may be applied to secular uses; because the expense has already been incurred for pious purposes. Ibid. Bon., d. 4, p. 2, n. 14; Mol. (See book 3, n. 491, v. 3. Ibid.).

185.

Question 2: What is understood by the term "pious uses"?

Answer: Those which are either for the divine worship or for spiritual or corporal mercy.

[*Latin ed. p. 375*]

He is ordained, for example, for the upkeep of temples, for the necessities of the poor, that is, those who do not have what is necessary, either for their sustenance or for maintaining their condition; also for the use of religious orders, in chapels, Masses, prayers for the dead, hospitals, etc. (See book 3, chapter 491; see question 2, sections o and 672.) From this, the following cases are resolved: 186. 1. If a cleric spends superfluous things on profane uses, for example, if he buys himself immovable property, he cannot retain these; because he does not fulfill the obligation attached to those goods, and he can still fulfill it, since the goods purchased are equivalent in price. Lugo, chapter 43. See Bonaventure, chapter 20. 2. He who receives from a cleric, as a gift from superfluous things, for profane use, may be excused from sin, if he did not induce him to make such a donation, nor is the cleric thereby rendered incapable of spending the superfluous things for pious uses; Lugo, chapter 40; because the cleric can substitute from his patrimonial or quasi-patrimonial possessions. (See book 3, chapter 491; see question 8.) 187. 3. Clerics, indeed, by custom, which is accepted in many places, may lawfully make a will regarding the revenues of benefices, but only for pious causes; although, where the custom prevails even for profane uses, they still sin mortally. See Lessius, book 2, chapter 19, section 4; Layman, ibid.; Bonaventure, ibid.

[*Latin ed. p. 376*]

p. 3, n. 2 and 5, Council of Trent, Session 2, Chapter 1, concerning reforms, and the following are derived from what has been said. Unless, however, they do so with the authority of the Pope; which, even if it occurs after a will has already been established, strengthens that will. See Sanch., Salm., Dian., p. 8, vol. 3, reply 99, on book 3, vol. 5, chapter 4, "Concerning the alienation of ecclesiastical goods." Here, he mentions several things concerning such alienation. Note 1st: that Pope Pius II, in the decree *Ambitiosa*, concerning ecclesiastical matters, prohibits, under severe penalties, the alienation of both immovable and valuable movable goods belonging to the Church, which can be preserved, and declares such alienation to be entirely invalid. See La-Croix, book 4, n. 1367. And Pope Urban VIII declared the same in the year 1624, in Delb., concerning ecclesiastical immunities,

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chapter 17, d. 1, n. 7. The same is said of a pious foundation established by the authority of the bishop, as Wad., in *De Controversiis*, book 2, doubt 8, section 7, and the Dicastery, apud Croix, state. Furthermore, the Sacred Congregation declared that religious orders cannot receive money on loan with the payment of interest. See Delb., in the aforementioned work, doubt 1, n. 12. Moreover, by the term "alienation" is also prohibited the exchange and the transfer of property as collateral, if a part of it is to be relinquished; see Delb., d., doubt, n. 12. However, the term of an *emphytosis* can be waived; see Delb., ibid. Furthermore, it should be noted that by the term "alienation" is also included the exchange, the transfer of property as collateral, and the settlement, always.

[*Latin ed. p. 377*]

And a portion of what the Church already possesses is relinquished; because then there is a true alienation. However, if the Church did not possess [the property], then the bishop can rightly make the transaction; thus Delber and Barbieri, with the *Receptio*, and others. But the penalties for those who alienate ecclesiastical goods without the proper formalities are perpetual deprivation from all office and excommunication; *Croix*, number 1369. However, Delber, with the common Doctors, notes that the aforementioned bull of Pius II, in the *Extravagantes* of *Ambitiosa*, concerning these penalties, is accepted in only a few places; and with regard to the obligation, the custom of the places must be considered. It should be noted that in the aforementioned *Extravagantes* of *Ambitiosa*, it is stated that [one] has presumed; therefore, those who are invincibly ignorant of this are excused from these penalties. Note 2: Although some good may have been given to a monastery with express permission to alienate it by its own authority, it cannot nevertheless be alienated without the consent of the Pontiff, as Lugo states in *Responsionibus Moralibus*, book 3, question 10, number 2, and question 12, number 3; because then the thing acquires the condition of ecclesiastical goods. But Croix, in book 4, number 1564, does not unjustly consider the opposite opinion to be probable, which is held by Delber in the aforementioned place, question 10, and by Bonaventure, Covita, Arminius, and others, as cited by Croix. The reason is that, just as the giver could dispose of the thing, so too the recipient can, by that power; and the thing does not then absolutely acquire ownership to the Church.

[*Latin ed. p. 378*]

but only according to the will of the giver; which Lugo concedes even in the case where the giver expressly wished that the thing be alienated: for then it is certain that the thing was never absolutely acquired by the Church. Thus, neither should a thing be said to be absolutely acquired by the Church, when it is given with the faculty of being alienated; just as, conversely, if the giver prohibits the thing from being alienated in any case,

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it cannot be alienated, even with papal consent and a just reason added, unless the reason is such as to imply the consent of the giver, as will be said below in Note 4.

Likewise, it seems permissible to repudiate a movable thing not yet acquired, as Croix states in the cited passage, with Sylvester, Abbot, and Delb. in dub. 5; who, however, in dub. 6, with Mol., Barb., Tamb., etc., say that a prelate or religious cannot repudiate a legacy; because it is acquired by the Church or monastery even before the tradition, so that they may have the rights; at least, the right to it is acquired. But Sanch., Bon., Reb., Abbot, Menoch., Gob., and others apud Croix, d. n. 1364, contradict this; because before the acceptance of the Church, no right or action is acquired with respect to the legacy. But the first opinion seems truer to me; for the validity of a donation requires acceptance, but not a legacy, which is immediately acquired by the legatee after the death of the testator. However, Abbot,

[*Latin ed. p. 379*]

Cov., Mol., Delb. etc., in the aforementioned passage, state that ecclesiastical goods can be mortgaged without the consent of the pontiff; however, Vasq., Rodr., Quart. etc., in the same place, contradict this. The reason is that a mortgage is a true alienation. Note 3rd: When referring to ecclesiastical goods, the rights and actions pertaining to real estate are included, as well as the names of debtors and servitudes; Delb. in the aforementioned place, question 12, Croix, Book 4, number 1365, with Wad. and Piasecio. When referring to valuable objects, this includes gold and silver vessels (vasa aurea), gems, and extensive libraries; Delb., question 2, section 1, and Croix with Tamb. Also included are flocks and herds considered as a whole; Delb., section 4. Also included is the felling of trees and forests, if it is done with deterioration, as stated by Laym., Book 3, treatise 9, chapter 10, number 2, Delb., session 5, and Pias., Wad. in Croix. A large sum of money given and intended for the purchase of real estate is also included; in this case, it is considered an immovable property; Delb., session 1, from number 1, and Vasq., Fill., Lez. in Croix, contrary to Wad. and Tiraq. Also included are perpetual annual revenues pertaining to real estate; Croix, in the aforementioned place, with Wad. Note 4th: An alienation of ecclesiastical goods made with due cause and formalities is valid, even if the donor has prohibited alienation; because the prohibition is presumed to be made if the due cause is absent, as Croix probably states.

[*Latin ed. p. 380*]

Book 4, paragraph 1366. With Delb. and others. The just causes for alienation are necessity or utility, according to the authority. This right is established by canon law concerning ecclesiastical goods. Also, piety, for example, for the redemption of captives or to alleviate some other grave necessity. Also, inconvenience, if the thing to be alienated is very distant,

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etc. Thus Laym. in the cited place, paragraph 3, with Mol., Abb., Silv., Nav., etc., in common opinion. Also, sometimes, great convenience, as Croix and Delb. state in question 28. Whether an alienation made without a just cause by the pontiff is licit and valid. The response is: If the alienation is made to another church, it will be valid, but not licit. But if it is made for profane uses, it will be illicit and invalid; thus Laym. correctly states in chapter 10, paragraph 11, with Nav. The reason is that the Pope is not the owner of ecclesiastical goods, but an administrator, as stated in book 3, paragraph 951, note 5. Note that the following solemnities are required: 1.º Common consultation. 2.º Consent of the chapter or clergy. 3.º Consent of the bishop or superior regular, and also of the patron, if a benefice with patronage is alienated, as Pias. believes, but Laym. contradicts this with others, as found in Croix, paragraph 1366. 4.º Subscription of those who consent, for cases expressly stipulated by law. 5.º Consent of the pontiff or the Sacred Congregation. See Croix, in the cited place. If, however, the alienation is made without a cause, Delb. states in question 20 that it is invalid, even if...

[*Latin ed. p. 381*]

Let it be done with the consent of the pontiff. Understand that if it is done for profane uses, it is permissible; otherwise, if it is done to another church, as Laym rightly says, in the aforementioned work. However, if the alienation is done with a sufficient cause but without formalities, the opinions of Abb., Silvest., Ang., Fill., Rodr., and others, as cited by Croix, number 1366 (who consider this to be valid for the forum of conscience), are opposed by Cov., Mol., Vasq., etc., with Delb., doubt 21, who more plausibly hold that the rights are invalidated by such alienations due to the risk of damage, and that these are entirely invalid without the consent of the pontiff, since consent is required as part of the form. However, they deny that this consent is presumed granted by prescription of 30 or 40 years, as do Quar., Fachin, etc. But Croix, ibid., with Mascardo, Dicast., Delb., Riec., etc., argue that it is more probable to presume consent based on the general axiom that every act rightly performed is presumed to have been duly performed, if it was lawful to do so. Note 6th. Without a special cause and without lawful formalities, the following may be alienated: 1st. Things which, with reasonable probability, will not last for three years without noticeable deterioration, such as fruits, clothing, and individual animals; Laym., book 10, number 2, and Pias., in Croix, book 4, number 1367. - 2nd. Things of small value with respect to the owner, namely, if they do not amount to the sum of one hundred ducats, as Pal. and Zerol. state, in Croix.

[*Latin ed. p. 382*]

Croix, in the aforementioned work, states that Delb., along with others, limits the sum to 25 *scuta*, which is equivalent to 40 *scuta* of Roman money: and Delb. rightly observes that this matter should be kept separate,

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so that the price of the entire property does not exceed the aforementioned sum; otherwise, the entire property could be alienated in small portions.

3. Property belonging to an academy, seminary, hospital, or confraternity, provided that it is not established with the authority of the bishop, as Pal. and Delb. state in Croix, in the aforementioned work.

4. Property for which the revenues are insufficient to maintain it, as Pal. and Bonasp. state. If, however, the property is unproductive, the permission of the Pontiff is required, as Quar., Bon., etc., state. But Wad. says that the consent of the bishop with the chapter is sufficient.

5. If it is necessary to sell in order to pay a debt for which the creditor is pressing at law; Abb., Quar., and Bonasp. state this in Croix, number 1367.

6. In the case of great necessity, which does not allow for waiting for the consent of a superior; Delb., in doubt 1, number 26, and Croix, in the aforementioned work, along with Quar. Also, in the case of notorious benefit to the Church, if, after obtaining the consent of the Pontiff, the opportunity would be lost; Delb., in doubt 22, number 2, and Croix, in the aforementioned work, along with Bald., Boss., and Bon. In these two cases, necessity and utility, at least the consent of the bishop is required, as Felin., Abb., and others, along with the Cardinal, state. However, Delb. makes an exception for regular canons who are exempt.

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Then, recourse to the bishop is not required. 7. o If goods are given to those who cannot retain them; Delb., Barb., Ricc. and Quar. 8. o If compensation is made for some benefit conferred upon the Church; Barb., Delb. apud Croix, loc. cit. Note 7. o Regarding the leasing of ecclesiastical goods, if the thing yields fruit annually, it cannot be leased for longer than three years; if it yields fruit every other year, for longer than six years; if every third year, for longer than nine years; thus Croix, L. 4, n. 1368, with Less., Azor., Vasq., Cov., Delb., etc. However, it is not prohibited to lease the fruits for the lifetime of the beneficiary; since the successor is not bound to maintain such a lease, as Croix, ib. with Mol., Paul., Silv., Abb., Cov. and Delb. But Fill., Mol., Lugo, Gutt. apud Croix, loc. cit., hold that it is permissible, and Delb. considers it probable (contrary to Wad.), that the beneficiary can lawfully obligate himself personally to lease the land again after three years. Also, the lease can be revoked after two years, but not sooner; Pal., Mol., Delb., etc. apud Croix, ibid. Here, these words are also understood to apply to the leasing of goods of any pious foundation which has been established with the authority of the bishop; Croix, ibid. with Pal. and Delb.

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FOURTH DOUBT. WHAT IS THE HABIT OF CLERICS; AND WHICH ARTS, OFFICES, AND ACTIONS ARE FORBIDDEN TO THEM.

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188. Whether clerics are bound to wear the habit and receive tonsure.

189. Which arts are forbidden to clerics.

190. Which offices.

191. Which actions.

188. *Response.* 1.° Clerics who have been initiated into the higher orders, or even into the lower orders, if they hold a benefice, are bound, with regard to the habit, to wear the tonsure and the clerical garment, which should not be striped, in which different colors are not interwoven, nor divided or cut. (Concerning the habit and tonsure, see what is said about the sacred orders, book 6, number 825.)

189. *Response.* 2.° With regard to arts, those of innkeepers, shopkeepers, and jesters are forbidden to them, as are games, such as dice games. Also, the arts of physicians or surgeons are forbidden, where the work involves incision or cauterization; unless, as Navarrus states, it is for the poor, or for relatives, or in a case of necessity. (See book 7, number 384, at the end, and 385.)

190. *Response.* 3.° With regard to offices, clerics (if they are beneficed or initiated into the sacred orders) are forbidden from holding the office of judge in a case involving bloodshed, or the offices of lawyers, advocates, or notaries in secular affairs. I add this,

[*Latin ed. p. 385*]

"Because in certain specific cases, these are permitted; for example, to act as advocate for those who are joined together and in misery. The reason is that a cleric ought not to involve himself in secular affairs. Sayr, book 12, chapter 25, paragraph 6 (who nevertheless concedes that instruments made by him are valid), Bon., in the aforementioned, doubt 10, question 1, final part, Laym., book 2, volume 1, chapter 8, paragraph 4, and notes that it is customary that they may be employed in civil cases as notaries, counselors, and even as judges. (However, whether a cleric may exercise the office of administrator of goods, commonly called a 'fattore,' see book 3, paragraph 838, verse. This is very important.)"

"191. "Response 4th: Regarding the actions that are prohibited: to carry arms, except when traveling; to enter taverns; to engage in noisy hunting (which I add, because hunting without noise, for recreation, is permitted. See aforementioned, book 3, paragraph 606.); to raise hawks or falcons for hunting; to play with dice or other games of chance; to engage in commerce or business for profit (but not for necessity) (see aforementioned, book 3, paragraph 831, and following); to cohabit with a woman, unless she is a mother, aunt, or certainly someone with whom no danger or scandal is imminent. Less., book 2, chapter 5, section 9, paragraph 40. However, Caj., in *De Clericis*, against Ang. and Nav., teaches that the transgression of these and similar things is not mortal, if temerity and contumacy are

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absent."

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Contempt and scandal. *Laym.*, book 5, chapter 4, number 9, chapter 12, numbers 2 and 3. It makes no difference whether the transgressor is to be excommunicated; for this penalty is a sentence to be imposed, which is incurred only by the contumacious after a warning. However, Navarrus generally considers this to be a more lenient view, especially since the canons use the word "Precept." Therefore, he says that it is a mortal sin if one does not wear the habit or tonsure. This is restricted by Bonaventure, *d. 8*, on sacred matters, question 1, paragraph last, number 8, if they have been initiated into higher orders or hold a benefice, and do not wear the habit or tonsure for a long time, without a just cause; then they sin mortally. He cites Regius, Navarrus, and Vasquez in his support. However, Silvestro and Laym., in the aforementioned place, deny this, if there is not a notable excess beyond local custom. Navarrus concedes that to engage in commerce is a mortal sin, *l. 3*, book 4, chapter 18, and others agree. But on this matter, see above, book 3, chapter 3, division 7, on buying and selling.

CHAPTER III. ON THE STATUS AND OFFICE OF CERTAIN LAY PERSONS, AND ESPECIALLY JUDICIAL ONES.

FIRST DOUBT. WHAT IS REQUIRED FOR A LAWFUL JUDGMENT?

192. "RESPONSE. These three things are required. First, there is jurisdiction, without which no judgment is valid (unless...)

[*Latin ed. p. 387*]

There is a colorful title and a common error, as is commonly found in Salm. app. de offic. etc., at the end of book 3, number 14 (taken from Barbarius, on the office of the praetor), and sin is committed mortally, as is stated in S. Th. 2-2, question 60. The common opinion is that a secular judge sins if he brings purely ecclesiastical persons or causes before himself; just as an ecclesiastical judge sins if he brings purely civil matters before himself; unless, perhaps, accidentally, due to a lack of justice in the secular forum, or unless the causes involve miserable persons. Furthermore, it is necessary for judges and legal experts to know which causes are purely civil, which are ecclesiastical, and which are mixed; and this can be seen in Laym., book 4, chapter 2, Lugo, book 17, section 3, number 193. "According to the proper process," for example, to summon the accused and hear him, etc.; unless, perhaps, it is sometimes expedient, when the crimes are atrocious, to quickly punish those apprehended in the act of committing the crime, or to change the common procedure in certain cases. For the supreme judge (provided the crime is public), it is sometimes permissible, without summons, defense, or any process, to condemn the accused to

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death, because the fact is notorious and public, and there are accusers and witnesses, as Nav. teaches, chapter 2, number 10, and Less., Fill., Bon., book 10, on precepts, question 2, part 2, number 5. See also Lugo, book 37, section 5, Trull., book 8, chapter 1, book 15. However, it should be noted that even in such cases...

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They are excepted from the common disposition of positive law and common law, but not from the law or the law of nature; therefore, the judge gravely sins who, in such a process, for example, against witches, considers anything to be permissible. See Cautionem criminalem, chapters 17, 18, 37, and following. Paragraph 194. Thirdly, a right intention, namely, that the proceedings should be conducted with the intention of justice. Therefore, if a judge proceeds out of hatred or some other bad motive, for example, for empty glory, he sins, not indeed against justice, but against charity or some other virtue, mortally or venially, according to whether that end is mortal or venial. Bonaventure, Decretum, part 1, title 10, question 2, paragraph 3.

DOUBT NUMBER TWO. CONCERNING THE POWER AND OFFICE OF THE JUDGE. ARTICLE FIRST. WHAT IS REQUIRED IN A JUDGE. Paragraph 195.

RESPONSE 1.º Besides the three things mentioned in the preceding doubt, it is required that he possess knowledge, so that he may know how to properly perform his duty. Thus, the Common Doctors and Bonaventure, Decretum, part 1, title 10, question 2, paragraph 3. The reason is that everyone is bound to know those things that pertain to his own office, and without that knowledge, he cannot properly exercise his duty and office. Therefore, the following cases are resolved: 1.º One who requests or accepts the office of judge (the same applies to a doctor and surgeon, as will be seen below, in *casus* Kosso).

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7. That which is more grievous, namely, that a notable detriment to the neighbor will follow, he sins mortally. *Nav.* c. 25; St. Antoninus, Lugo d. 37, n. 1.

8. A judge lacking the necessary knowledge ought not to be absolved, unless he has made a renunciation of his office, or unless he has a firm intention of renouncing it. Thus, St. Thomas [II-II, q. 66, art. 2]; Cajetan, *Clavis regum*, l. 12, c. 13, n. 2; *Reg.* d. 25, n. 675; *Nav.* c. 25; Farin, 3 parts, q. 3, art. 16. The reason is, because no one can retain an office whose duties he is unable to perform, especially when it causes damage or danger to the neighbor.

9. If a judge, through great incompetence, renders a bad judgment, he is bound to compensate the injured party and to pay the expenses of the litigation; just as, whenever a notable detriment, whether in the substance

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of the matter or in superfluous expenses, occurs to the parties, due to his culpable ignorance, he is bound to do so. Bonaventure; Lugo, loc. cit. (This is common with Salm. de offic., c. 1, n. 58; whatever others of the legal experts may say.)

10. If a judge acknowledges an error committed by himself (even if without grave fault) to the prejudice of a litigant, he is bound, if he can do so without infamy, to prevent the error, for example, by secretly warning the injured party to seek recourse through an appeal or otherwise: because this pertains to the proper execution of his office. Lugo, loc. cit., n. 3.

Lig. Theol. Mor. T. VII.

[*Latin ed. p. 390*]

196. "Responsio 2ª: Judex tenetur causas judicare et celeriter expedire; quia ex officio tenetur cuique tribuere suum: quod non facit si sententiam sine justa causa differt. Unde resolvuntur sequentes casus: 1º Judex mortaliter peccat contra officium suum, differendo valde notabiliter causarum expeditionem sine justa causa. *Silvaster in V. Judex, quaestio 12. Clavis regni, capitel 12, n. 8. Navigium consciences, capitel 25, n. 14. etc., cum Bonaventura, Doctorum, pars 3, quaestio 2.* 2º In casu dicto, idem judex tenetur parti læsæ damna et expensas quæ ex iniqua dilatione secutæ sunt restituere: quia est earum injusta causa. *Ibi, AA. II. capitula.* An autem judex possit accipere pecuniam ad expediendam causam alicujus præ alia, dicit Laymannus, *liber 3, sectio 5, tractatus 4, capitel 4, n. 9*, spectato jure naturali, non audere id damnare; quia illa nova obligatio, quam suscipit, est pretio digna. Sed verius contradicunt Salmeron, *loco citato, n. 66*; quia judex ex justitia tenetur cito expedire causas eorum qui æquale jus habent ad expeditionem; nisi extraordinarium susciperet laborem ad quem ex vi sui muneris non teneretur. 3º Si judex in exequenda causa et proferenda sententia negligens aut iniquus sit, non tantum parti læsæ sed interdum etiam fisco tenetur; v. gr. si mulctam pecuniariam."

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which, by custom or common law, he ought to impose upon the accused, he remitted without cause. *Summa Theologica*, 2-2, question 67, article 4, ad 3; Silvestri, *De Pœna*, question 18; Salmeron; Layman, book 3, part 2, chapter 5, number 7, against Azor. (And with Azor, Lugo probably agrees, *Disputationes de Controversiis*, 36, number 97, with Lessius, Salas, etc.; Salmeron, *De Officiis*, chapter 1, number 31, and *De Legibus*, chapter 2, number 76, with Gratian and Martin, that the judge is not to be held liable if the accused has not yet been condemned to a fine. The reason is that before a sentence, no right to the penalty accrues to the treasury. Hence, if the judge unjustly acquits the accused, he sins against legal justice, not commutative justice. The Divine Thomas, in the aforementioned passage, speaks only of corporal punishment and of the damage to the

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commonwealth that may result from an unjust remission. See what is said about the accuser, number 257.) ARTICLE SECOND. WHAT IS TO BE OBSERVED BY THE JUDGE REGARDING THE INQUISITION. 197. In what ways can proceedings be instituted against the accused? 198. In what cases can the judge institute a general investigation? And in this, to what extent are subordinates bound? 199. When can the judge proceed without an accuser? 200. When can the judge inquire in particular? 201. Several things to be noted about the judge proceeding through an investigation. 197. IN WHAT WAYS CAN PROCEEDINGS BE INSTITUTED AGAINST CRIMINALS? 1.º Through accusation, when it is...

[*Latin ed. p. 392*]

1. A trial of a defendant who promises to prove his innocence. 2. The way of denunciation, when the accuser does not wish to undertake the burden of proof. 3. The way of inquiry, which is threefold: 1. General, when it is inquired in a general way whether the laws are being observed; 2. Special, when it is inquired about a certain person and a certain crime; 3. Mixed, when either only the person or only the crime is special; as when it is inquired who killed Caius.

198. "Response: 1. The judge, without any specific occasion, can, by virtue of his office alone, institute a general inquiry; in which, however, his power does not extend to eliciting hidden things about which there is no notoriety. The former reason is because it is necessary for the common good, and no one is harmed by it. Although some crimes may be revealed, it happens by accident, beyond intention; and the common good prevails. The latter reason is because great inconveniences would follow. Farin., Less. lib. 2. tr. 28. dist. 13.

Therefore, it is resolved: 1. In this inquiry, the subject, even if questioned under oath, is not obliged, and indeed cannot, reveal a hidden crime. Laym. lib. 3. t. 6. cap. 4., Less. l. c. (This is common with Salm., app. de offic. c. i. n. 150. with Trall., Fill.) 2. If he reveals such a thing, he sins against..."

[*Latin ed. p. 393*]

justice (unless perhaps it should yield, not so much as punishment, but rather for the certain amendment of him who has committed the offense, or to avert a grave evil from others); for since the crime, as is supposed, cannot be proven, and therefore from its revelation nothing can follow other than infamy, it has no right to be revealed. Laym. ibid. and vol. 3, part 2, chap. 4. » 3º If, in this investigation, from the revelation of two or three, the author of a crime is discovered, then proceedings can be taken against him through such witnesses, as is the common practice. Laym. book 2, vol. 3, p. 2, art. 4, no. 12. » 199. Truly, a judge cannot condemn anyone without an accuser, as is commonly stated by St. Thomas, Cajetan, Sanchez, Soto, Lessius, etc., with Salm. in the appendix on the office, at the end of vol. 3,

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chap. 1, no. 47. But it is sometimes said that a virtual accuser is sufficient, who is considered to be present: 1º when there is notoriety of the crime, so that it cannot reasonably be denied; in which case it is said in c. Ad nostram, 2. De jurejur.: "Manifest accusations do not require, nor is the judicial order to be observed in them." V. Salm. no. 48. - 2º When there is public infamy, at least judicially contested, by two witnesses; or a clamorous insinuation, that is, the rumor of many concerning the crime. However, this infamy is only sufficient for inquiry; Salm. no. 49. Whether, however, indications are sufficient for inquiry.

[*Latin ed. p. 394*]

Firstly, whether the matter is secret, that is, known only to certain individuals, or whether it requires to be made manifest, that is, known to a larger portion of the people, or of a college, or of a neighborhood, or to a larger portion of serious men. The first opinion is held by Soto, Azorín, and Navarrus, as cited by Salmeron in *De Officiis*, chapter 1, number 115. The second opinion is held by Salmeron, based on number 119, along with Lessius, Suarez, and Sanchez, and is generally accepted.

Thirdly, when a crime is committed in the presence of a judge, with others present; especially if the judge is actively administering justice; Salmeron, numbers 50 and 51.

Fourthly, when the crime is against the commonwealth or the king, as in the case of heresy or treason; when a crime is committed within the church against ecclesiastical persons; when the intention is to avoid the appointment of an unworthy person, or to obstruct a marriage; when the accused has confessed before several people, or judicially before two witnesses; when someone is accused; when there is sufficient evidence, that is, one witness outweighs all objections; when crimes are connected; when a lord is found murdered (in which case, inquiries can be made against the servants); when the crime is likely to occur in the future, and when a fiscal official reports it, as stated by Silvestro, St. Antoninus, and Fillon, etc., against Sanchez, etc., and Salmeron argues that both opinions are probable, chapter 1, number 143. In all these cases, it is possible to proceed with an investigation without public infamy or scandal, and sometimes even to a sentence. See Salmeron, number 53, and number 152.

[*Latin ed. p. 395*]

200. » Response: When a crime is manifest, and the perpetrator is unknown, it is permissible for the judge to inquire generally as to who committed it (as Sanch., Vill., Trull. with Salm., ibid., no. 144, against Caj., etc.); but not specifically, for example, whether Peter committed it, unless some infamy or indications precede. The first part is evident, both from the practice of judges and from the inconveniences of the contrary. The reason for the latter will become clear from what follows. See Bon., d. 10, in VIII, præc., q.

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3, part. 5. "It is the common opinion with Bus. that, without any preceding infamy or clamorous insinuation as mentioned above, the judge cannot inquire specifically (although he may inquire generally). And then, if a witness is questioned by him, that witness may, indeed must, conceal the guilty party, as Bus., no. 1, and Salm., de offic., cap. 1, no. 150, with others in common. However, if the witness spontaneously reveals the guilty party, then it is probable that the judge may proceed with an investigation against the guilty party, as Sot., Less., etc.; because the judge, by virtue of his office, proceeds lawfully against the guilty party who has already been legally identified without his own fault; otherwise, if the judge unjustly extorts knowledge of the matter from the witness, as Salm., ibid., no. 158, with Nav., Sanch., Less., c. 1, and in common. 201. Note the following: 1st, that the judge proceeding by investigation, even with a proven crime, must diminish the penalty. This, however, is understood.

[*Latin ed. p. 396*]

Concerning the ecclesiastical judge, and not the secular one. Thus, Salm. on Offices, chapter 1, paragraph 158. And it is understood that unless the crime is such that irregularity is incurred thereby, as Salm. states, paragraph 150. Note 2: Prelates are not permitted to investigate against religious men if there is doubt as to whether sufficient evidence exists, as mentioned above, regarding the investigation; because in such a case, their reputation is presumed, which would be damaged by the investigation. Understand, however, that unless there is an imminent danger of common harm; in that case, the right of the religious order prevails. Thus, Bonaventure, Rodriguez, and Salm. on Offices, chapter 1, paragraph 157. Note 3: More is required for a special investigation. 1. Proof of the actual crime; unless the crime is one that is difficult to prove. 2. An accuser, at least virtually, as mentioned above, paragraph 199. 3. Proof of the place, time, etc. 4. A competent judge. 5. That the investigation be conducted before twenty years have passed from the date of the crime. See these and other things in Salm. on Offices, chapter 1, paragraph 159. Note 4: The process through investigation (even in the cases of religious) must be formed in this way. 1. A secretary of the proceedings must be chosen by the superior. 2. Witnesses must be examined through distinct articles, under oath. 3. If no substantial proof is obtained from the witnesses, the accused cannot yet be legitimately questioned; nor, if questioned, is he obliged to answer; unless (according to Suarez) sufficient infamy has been proven and other serious indications are present. 4. Finally, if the accused...

[*Latin ed. p. 397*]

He confesses the crime, and the proceedings move towards a judgment; if not, proceedings are initiated to convict him, or to torture him if he is strongly suspected of the crime. These and other matters are found in Salm.

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d. c. 1, n. 167, Resp. 3º. In order for a judge to conduct a special investigation based on infamy, he must, at the very least, have a regular basis for doing so, namely, infamy or something equivalent that provides a just cause. The reason is twofold: first, because otherwise he would be defaming someone without cause; second, because the judge must proceed based on public knowledge, which he does not possess unless it is through an accusation or confession of the deed, or through evidence, or through infamy; and for infamy, it is not sufficient that two witnesses swear that they have seen the crime being admitted, because it is still hidden, but it is required that the rumor be spread throughout a significant portion of the community, that is, the city, the neighborhood, or the monastery, and that it not have originated from malicious sources; although in this matter, it is safe to follow the common practice of good men and of public affairs, as Laym. l. c. and Less. d. 15, n. 19, state, citing others. Bon. l. c. Therefore, the following is resolved concerning the *casus*: 1º Before a judge proceeds to a special investigation based on infamy, the infamy itself must first be examined and proven by witnesses, at least by two, who name the persons from whom they publicly heard it. Nav., Rub. de jud., Trull. l. 8, c. 1, d. 17. 2º The judge is informed of a crime by infamy.

[*Latin ed. p. 398*]

v. gr. concerning adultery, one cannot inquire about another matter of which the person is not accused, v. gr. theft: because it would be a special investigation without prior accusation. Salona, Caj., Trull. l. 8. c. 1. d. 18.; unless, however, the crimes are connected, or one is a circumstance of the other. Ibid. and Sanch. 2. p. cons. l. 6. c. 3. d. 21. "I said in response, 'regularly'; because a special investigation does not require prior accusation in certain cases; which are seen apud Less. l. 2. c. 29. d. 15., Bon. l. 2. d. 10. p. 5., Sanch. 2. p. cons. l. 6. d. 19., Trull. l. c." ARTICLE THIRD. WHAT IS PERMISSIBLE FOR THE JUDGE REGARDING QUESTIONS OR TORTURE. 202. What is required in order to proceed to torture the accused. 203. Up to what point can the accused be tortured? 204. Can someone who has been tortured once be tortured again? 202. "RESPONSE 1.° In order to torture the accused (if, indeed, it is possible to torture him), certain grave crimes are required, at least with such indications that they constitute sufficient proof, that is, that they render the matter more than probable; such as, for example, one witness who overcomes all objections, the confession of the accused outside of court, or, also, the assertion of two or three accomplices in the crime, except in the case of witchcraft (in which case, even a simple denunciation suffices).

[*Latin ed. p. 399*]

(regarding accomplices and how it is permissible to proceed, see Tann. l. 3. d. 4. de just. d. 2. et 3., Laym. l. 3. t. 6. c. 5.); also, public notoriety arising

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from honest men and proven by witnesses, with the assistance of another's judgment (for notoriety alone does not prove, but has its place like an accuser): Laym. l. 3. t. 6. c. 5. n. 9. from various sources. The reason for this is that torture is instituted as an aid to proof when arguments and evidence are very effective, so that full proof may be elicited: for a confession of a crime, if it confirms the crime outside of torture, and remains in it until the following day, makes a semi-complete proof into a complete one. Less. l. 2. c. 20. d. 18., Delr. l. 5. s. 3., Laym. l. c. » I said in response: but if it is possible to torture; because certain persons are prohibited from being tortured except in excepted crimes: such are men constituted in great dignity, officials of princes, governors of cities, nobles of the equestrian order, soldiers, doctors, and their children, also the immature, the elderly, those whose memory is failing, pregnant women, and those not yet confirmed in pregnancy. Delr. s. 6., Bonif. c. 6., Lug. d. 37. s. 14. » Therefore, it is resolved: 1st. The judge sins gravely if he does not first try all other milder means of discovering the truth before resorting to torture. 2nd. Torture should simply be avoided.

[*Latin ed. p. 400*]

When there is complete proof of the crime; for torture is ordered for this purpose. Navarrus, Lessius, *loco citato*, chapter 3. Insufficient indications for torture are: if the body of the slain person bleeds in the presence of someone; if the accused are unable to weep. Also, evidence obtained through torture, etc., is illicit; concerning which, see Delrio, book 5, Lessius, number 176, Trull., book 8, chapter 1, decree 21. Chapter 4. Judges sin who, in criminal cases, bind a person suspected of infamy, before they have proof against him, by oath to tell the truth about all matters pertaining to the case for which he is suspected. Navarrus, chapter 18, number 41, and chapter 25, number 36. Furthermore, the same is true if, even without an oath, they disturb and pressure a person with threats, terrors, or the display of torture, so that, contradicting himself, he reveals some circumstance by which he may be convicted and punished. See Lugo, book 40, number 1. Chapter 5. If a judge extorts a confession unjustly, for example, if he extorts it from those who are exempt, if without sufficient indications, if by malice, lies, or a false promise of impunity, he induces someone to confess or otherwise (whether in substance or in manner) notably exceeds the limits of torture, the confession is null and void and cannot be acted upon; indeed, the judge is bound to compensate for damages, as Lugo teaches, book 37, section 14, number 157. See Lessius, chapter 19, decree 18.

[*Latin ed. p. 401*]

Layman, book 3, treatise 6, chapter 5, where he also clearly rejects false testimonies, which the accuser suggests to the judge. See Tannery, volume 3, division 2, number 6. Even if the accused ratifies an unjustly extorted con-

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fession the following day, nevertheless the judge cannot proceed to punish the accused or any hidden accomplice, because since the confession is invalid, consequently the ratification arising from it is also invalid, according to the penultimate law of the section concerning questions, and therefore, the knowledge obtained through that means is unjust. Navar, Salon, Lessius, Sayr. Council of Trent, book cited, dispute 10, number 203, response 2. It is permissible to apply greater pressure against one against whom there are more serious indications, but not so that it is morally impossible to endure the torments, considering the persons involved. Therefore, if this limit is exceeded, the extorted confession will be involuntary and must be considered as null, even if it is ratified before the judge outside of the torments, out of fear of new torments. Layman, chapter 5, number 11. Response 3. Once someone has been tortured, if they have confessed nothing, they should not be tortured again unless new indications of the crime arise, because the previous torture eliminates the previous statements. However, if the crime was confessed during the torture and then retracted before the judge outside of the torture, the torture can be repeated, both because the indications remain in force, and because of the person's inconstancy. If, however, someone is tortured a third time and confesses, and then retracts, they must be absolved, because it must be presumed that the confession was obtained by force of the torments.

[*Latin ed. p. 402*]

Therefore, absolutely none. Less. c. 27. d. 7. Some object, if the judgments are very grave, which might give rise to a violent presumption that the crime is maliciously denied by the accused. Laym. l. c. V. Lug. d. 57. n. 156., Dian. t. 3. tr. 6. r. 16. et 23., Trull. l. c. V. infra hic d. 6. et 7. Concerning when, and how a judge may question the accused about accomplices, see Trull. l. 18. c. 1. d. 22.

ARTICLE FOURTH. WHAT MUST BE OBSERVED BY THE JUDGE REGARDING SENTENCE AND PUNISHMENT.

205. When may an inferior judge relax or diminish the punishment? What if the judge is the supreme one?

206. May a judge judge in a case where there was a lawyer?

207. May a judge condemn a guilty person who is legally innocent?

208. What if he knows the accused to be innocent, and is proven to be guilty?

209. What must a judge do if both sentences are probable?

210. More things to note concerning this matter.

211. Is it permissible for a judge to accept gifts from the parties in dispute?

212. Do those who give gifts to the judge or his ministers sin?

213. With what punishments must a judge be punished who, for gifts,

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renders an unjust sentence?

214. To what is a judge bound who renders an unjust sentence?

215. Does an unjust sentence bind in conscience?

216. To what is a judge bound who has accepted gifts?

217. What may commissioners or executors receive?

[*Latin ed. p. 403*]

205. "RESP. 1. o The judge must judge according to the laws. Therefore, an inferior judge ordinarily cannot relax or diminish the penalty, even if the plaintiff consents; unless, perhaps, it were deemed necessary for some other good reason, or unless the matter concerned only a private injury to the plaintiff; S. Th. 2. 2. qu. 65. a. 6. reg. l. 25. n. 634., Bon. etc., Trull. lib. 8. c. 1. d. 12.; (or unless the judge justly interprets the will of a superior, or unless there is another just cause, e.g., if correction is hoped for through the diminution of the penalty; or if the accused spontaneously confesses the crime, etc. V. Salm. append. de offic. c. 1. n. 31.)" I have said "inferior"; because the supreme judge, for a just cause (e.g., if the accused is deserving of merit, or if there is an opportunity for public joy, etc.: except if the accused is harmful to the republic; S. Th., Suar., with Salm. ib. n. 29.), can do this; but without a grave reason, he would sin gravely, according to Caj., verb. Judex, because he would favor the guilty and would contribute to sin. As for whether it is permissible to intercede with the judge for the release of the accused, see Bon. l. c., Trull. (especially in those things which the judge is permitted to do, Sot., Lugo, Trull., Salm. n. 32.)"

206. "RESP. 2. o If there was an advocate in a certain case, the judge cannot be the same person and render a judgment, l. Eos, in princ., c."

[*Latin ed. p. 404*]

Concerning appeals and extrajudicial matters; regarding jurisdiction; because his judgment is considered suspect due to partiality, as common Doctors teach, Sanchez, loc. cit., consil. c. un. d. 26 (and adds that the sentence will not be valid; which, however, others deny, if he is the ordinary judge): Lugo, de just., d. 41, l. 1, n. 4. See also Diaz, p. 3, l. 5, misc. r. 56, where, from Cord., he understands that such a judge does not sin in conscience, if, without affectation, and the other party being unaware, he judges according to the laws.

207. Response 3rd: A judge, who privately knows someone to be guilty, but who, legally, has been proven innocent, cannot condemn him; because he judges as a public person, and therefore must follow public knowledge and proceed according to the allegations, especially in favor of the accused. Thus says St. Thomas, 2-2, q. 67, Nav., c. 25, Caj., Fill., Less., Bon., d. 10, q. 2, p. 2.

208. Response 4th: A judge, who privately knows someone to be inno-

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cent, but who, legally, has been proven guilty, is obligated in every way to free him, if he can, for example, by preventing the accusation, by overturning the judgment, by opening the prison, if it can be done without greater harm, or by remitting the case to a superior. And if he cannot achieve this, then, with good reason, many Doctors hold, following St. Thomas, loc. cit. (with Sanchez, Tamb., Vasquez, and Salm., tr. 25, de V. præc., c. 1, n. 29), for the reason given above, that he may condemn him.

[*Latin ed. p. 405*]

It appears, however, that the contrary is more true, as others teach, namely Lessius, *lib.* 2, *cap.* 29, *dist.* 10; Salmeron, *verb.* *Judex*, Peter, Navarret, Fillon, Bonaventure, *dist.* 10, *quaest.* 2, *pars* 2, *n.* 2; Tollet, and others (and this is very probable; because to condemn an innocent person is intrinsically evil, just as it would be to force a woman to live with someone whom she privately knows the judge is not her husband: thus, Holzmüller, *tom.* 1, page 499, from note 668, with Anaclasius, Lessius, *lib.* 2, *cap.* 29, note 78, and also Navarret, Silvestri, Anglerius, Panormitanus, Hostiensis, Maldonato, Cordier, etc., apud Salmeron, *loc.* *cit.*, note 27; Vide Lugubrio, *dist.* 17, *sect.* 14): because to directly kill an innocent person is intrinsically evil. Therefore, however it may be known that someone is innocent, it will be a sin; Lessius, *loc.* *cit.*. However, in lesser civil and criminal cases, where only monetary penalties are at stake, the judge, according to these authors, can also simply proceed according to what is alleged and proven; firstly, because the innocent person can be restored to their full rights through an appeal; and secondly, because the judge has the power over the goods of his citizens when the public good requires it, as in this case, so that the established order of public judgments is not overturned to the scandal of the people (with Lugo, Lessius, Viva, Bannitus, Bonaventure, *ib.*, note 28). Both of these opinions are probable. Vide Layman, *cap.* 2, note 8; Lessius, *dist.* 10; Bonaventure, *loc.* *cit.*, note 4. ”209.” ”Quæro. 1. What is to be done by the judge?”

[*Latin ed. p. 406*]

”When there are probable opinions on a matter of law, for example, whether an inheritance is due from a less solemn will, ’Respond.’ It is necessary to follow the opinion on the law that appears more probable, especially if the judge is the highest. And it does not seem to hold what some teach, that one satisfies his conscience if he judges a case in favor of the one who defends himself with a probable argument, even if the other argument is more probable. The reason is that the judge is established to decide the case according to its merits and according to the opinion that appears most consonant with reason; otherwise, he would be a respecter of persons.” ”I said ’if he is the highest judge,’ because if any judgment

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has been received differently in a higher court, the lower judge seems to be able to judge according to it, even if it is less probable, because he sees a more probable judgment that must be recalled in the higher court. L. i. t. i. c. 5. §. 5. n. 16. from Silv., Vasq., etc. However, see Lug. d. 37. s. 16." "210. Note here proposition 2, condemned by Innocent XI, which stated: 'I believe that a judge can judge according to the opinion, even if it is less probable.' The reason for the condemnation is that the judge, by the very fact of his appointment by the republic, is established to give to each his due; and indeed, the one to whom the more probable opinion favors has a greater right."

[*Latin ed. p. 407*]

But the Doctors note, firstly, that attention must be given to that opinion which is more probable, according to what has been alleged and proven. They say that a judge cannot open the matter to the other party, so that the latter might allege something in its own favor; because this would be acting as an advocate, which is not permitted to a judge. Thus, Salm. in *Apparatus ad Officium*, chapter 1, number 40, with Vasquez, Suarez, Palafox, against the Congregation. They note, secondly, that to speak precisely of a condemned proposition is blameworthy; therefore, they say that it does not prohibit the judge from following the less probable opinion concerning actions, as in examining witnesses, etc., following previous judgments. Salm. ibid. with Tapia and others cited. The question arises, firstly, whether, in civil cases of equal probability, a judge can render a judgment in favor of the party for whom he prefers. In equal probability of fact, if the law equally favors both parties, the Doctors commonly say that the matter should then be divided. Thus, Lugo on Justice, book 37, number 115; Sanchez on Matrimony, book 2, book 41, number 16; Palafox, volume 1, treatise 1, book 2, page 10, number 2, with Suarez, Concordiensis, Salona, Bona, etc., against a few. It becomes doubtful when it is under the opinion of which party the law more favors. The first opinion holds that, in that case, the judge can adjudicate the matter to whomever he wishes; because, since both parties, according to various Doctors, then have a complete right to the matter based on probable opinions, the judge can rightly conform himself to one of those opinions, and then he will not inflict any injury on the other party.

[*Latin ed. p. 408*]

Thus, Lugo, in the aforementioned work, number 45, along with Sotelo, Valentini, Salas, Ledo, Mettenhof, and also Palafox, who in number 5 calls it "common" (but undeservedly, as we shall see). The second opinion, which Salmerón defends in *Tractatus de Matrimonio*, volume 2, chapter 1, number 42, along with Suarez, Banniza, Concílico, Villalobos, Prado, and Sayreras, etc., and which Roncaglia rightly holds to be the correct view in *Tractatus de Sententiis*, volume 15, question 2, chapter 1, question 9, and Ana-

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cleto in *Tractatus de Sententiis*, volume 1, division 3, section 3, number 62, teaches that in that case, the matter must be divided. The reason is that the judge is not the master of the things, but a distributor according to the laws of the parties, and therefore, if the rights are equal, he must divide the matter equally between them. However, since the law, all other things being equal, favors the possessor, the following exceptions are made: 1. Namely, in the case where the proofs are equal, or where there are opinions equally probable on both sides, and one party possesses the good in question; then that party should be favored, as rightly stated by Palafox in the aforementioned passage, Salmerón in number 44, and Sporer in *De Conscientia*, book 1, number 69, and it is proven from the *Collectio Litterarum de Probationibus*, where it is stated that if the witnesses of both parties are equally suitable, the witnesses of the possessor are preferred. 2. Namely, if the case concerns matters of marriage, dowries, widows, orphans, and other pious causes; for then judgment should be rendered in favor of them, even if they are the defendants, as stated at the end of the chapter on judgments and legal matters. Otherwise, if the opposing party has a stronger legal claim, as stated in the beginning of the book, "Si pars..."

[*Latin ed. p. 409*]

Concerning the matter of testimonies, the third exception is admitted, if the case involves criminal charges, especially capital offenses; for then, one must judge in favor of the accused, even if the opinion concerning him is less probable. The reason is that no one should be condemned unless his guilt is established, as stated in the book on penalties, and in the book *Sciant*, chapter on probabilities, where it is said that, in order to pronounce a sentence of death, the proofs must be clearly evident. And it is said that this was the intention of the Pope when he condemned the aforementioned proposition 2, as Lamb., Filg., and others state apud Salm., number 45.

Question 2: In civil cases, should the judge judge against the legitimate possessor, if the opinion favors the plaintiff?

It is certain that 1st, if the reasons are equal, one must judge in favor of the legitimate possessor, as demonstrated by Sanch. in *De Matrimonio*, book 2, title 42, number 12, with Soto, Cov., Silv., Mol., and countless others, in the rule 65 on legal rules, where it is said: "In equal fault or cause, the condition of the one possessing is stronger." The reason is that, although in doubt the law may be equal with regard to ownership, nevertheless, the right of the one possessing is stronger, who is certain of his right to possess.

It is certain that 2nd, in a doubt concerning possession and ownership, one must judge in favor of the one who has the more probable reasons; this is evident from proposition 2, condemned by Innocent XI, which stated: "I believe that a judge may judge according to an opinion, even if it is less

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probable."

[*Latin ed. p. 410*]

It is probable. The reason is that the judge is appointed by the republic to render justice to each person according to the merits of the case; therefore, he ought to award the matter to the one who has a stronger right in his favor. See Sanch. dec. lib. i. cap. 9. n. 47, Lugo d. 37. n. 116, and Salm. tr. 29. c. 1. n. 39. It is doubtful whether there are more probable reasons in favor of the plaintiff, for whom judgment should then be rendered. Tamb. dec. lib. i. cap. 3. §. 4. n. 6 responds that in such a case, the judge is obligated to award the matter to the plaintiff for the same reason already mentioned; because the right of possession prevails in an equal case, but not in a less probable case. Lugo, de just. d. 16. n. 99, says that the judge is not obligated, but may render judgment in favor of the plaintiff, because he may follow a probable opinion, namely, that the plaintiff, by presenting more probable reasons in his favor, sufficiently proves his right. Others, however, more commonly, as Cardinal i. Crisi d. 16. c. 9. n. 156 and 192, with Diana, etc., and in the aforementioned proposition 2, diss. 3. c. 4. n. 35 and 59, as well as Croix l. 4. n. 1485, Elb. t. 1. p. 70. n. 198, Holzm. t. 1. p. 37. n. 172, and another learned modern writer, who (with Filg. in the same proposition 2) call this opinion common, hold with good probability that the judge cannot legitimately deprive a person who lawfully possesses something of his property, if there are probable reasons in his favor; even if there are more probable reasons in favor of the plaintiff. The reason is that possession gives the possessor a certain right to the thing.

[*Latin ed. p. 411*]

It must be maintained until it is established by law that another has a right, as Ronc. says: "The title of possession, according to the common opinion of theologians, eliminates more probable reasons." And this is stated by Cardinal L., in the same place, number 143: "It is proven by the most common authority of the Doctors, with Bart., Innocent, Abelard, Jason, Felinus, etc., and many other texts." Therefore, the most learned Cardinal Sfondratus wrote in the *Regimen Sacramenti*, book 1, section 20, number 11: "One must not proceed against a possession unless with certainty." For since the right of possession is a certain right, it cannot be eliminated except by another certain right of the accuser, and one that has already been proven. It cannot be said that the accuser proves his own right when he adduces reasons that are merely probable, and not convincing, against the possessor who has a probable right. This opinion is also held by Bonaventure, in *De Reparatione*, book 1, question 2, paragraph 2, number 2, where, speaking of the obligation of restitution, he says that the possessor who has a reason in his favor that is probable is not obligated to make any restitution, even if the right of another seems more probable to him, giving

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the following reasons: "Firstly, because in the external forum, he would not be obligated to make any restitution; therefore, he is not obligated in the forum of conscience, since the judgment of the internal and external forums must be the same, when the external forum is not based on a false presumption; secondly, because certain possession prevails over reasons that induce doubt on the opposing side, but not over those that generate agreement." Therefore, since he has certainty...

[*Latin ed. p. 412*]

Here, the author states that even if the plaintiff has more probable reasons in his favor, but not conclusive ones, the possessor should not be deprived of the thing possessed by a judgment. Nor does the aforementioned text present an obstacle: "In equal causes, the condition of the possessor prevails." Therefore (as Tambacus says), one does not prevail in a cause that is not equal. For it can be responded that from that text, it does not necessarily follow that a judgment should be rendered in favor of the plaintiff who has more probable reasons against the legitimate possessor, who, for his part, has a probable reason; rather, in this case, that other rule of law should be considered, namely: "When the rights of the parties are obscure, the defendant should be favored more than the plaintiff." I said "legitimate possessor"; otherwise (as we stated above), if the possession were not certain or not certainly legitimate, then the judge must decide according to the more probable opinion regarding ownership, as all teach, including the aforementioned Cardinal, in *d. prop.* 2. And therefore, judges commonly adjudicate the thing to those who have the more probable right; because in the external forum, it is difficult to prove the good faith of the possessor.

211. Question 3. Whether it is permissible for a judge to accept gifts from the parties in litigation. It is certainly not permissible to accept large gifts, which are called *sportulae*, that is, money, clothing, and other valuable items. It is doubtful whether it is permissible to accept small gifts, which are called *xenia*.

[*Latin ed. p. 413*]

That is to say, food and drink. Az., Caj., Silv., Ang., and Menoch. affirm this in Salm., chapter 1, paragraphs 75, 74, and 80, from the book *Solet*, section Non vero, in the chapters on the office of the procurator, where it is said that gifts do not come under the name of presents. Furthermore, they prove this from chapter *Statutum*, paragraph *insup.* concerning the rescript in 6, where Boniface VIII says: "Moreover, that the judgment may proceed freely, he must not accept any gift (except perhaps food or drink offered purely out of generosity, which can be consumed by a few in a few days, or unless he happens to travel outside his own home for the cause assigned to him, he may incur moderate expenses) from those parties in any way whatsoever." However, they contradict Salm., paragraphs 79 and

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80, and argue with Navar., Sot., Cord., and others, and they say that the aforementioned *Solet* was corrected from section *Scriptum*, 2, *auth.* and section *auth.* *Jusjurandum* etc. But they say that the text in the section *Insuper*, as mentioned above, speaks only of the apostolic delegate, and not of others, as is clear from chapter *Cum ab omni*, in *De vita et honest. cler.* and chapter *Romanæ*, concerning censures in 6. They say that only the bishop is excepted when he visits the diocese or consecrates a church, who may only receive moderate expenses for food, according to chapter *Romana*, paragraph *Procurationes*, concerning censures in 6. V. Salm., paragraph 68. Despite these things, we do not know that the first opinion is disapproved of, as long as...

[*Latin ed. p. 414*]

Those gifts are not to be solicited by the judge, either directly or indirectly; for we do not know in what way delegated judges differ from others. As the aforementioned Glossa states, "It is not considered simony if a prelate of a regular order freely receives something from one who seeks to enter religion, as is stated in chapter 30, 'Dilectus,' at the end, concerning simony, because it cannot be supposed that the prelate would wish to sell the admission to religion for some trifling gift freely offered; thus, neither can it be supposed that the judge would wish to render an unjust judgment for a similar service." 212. Question 4th: Whether he sins who gives gifts to a judge or to his ministers. Distinguish: if he gives without a just cause, certainly he sins, by cooperating in an unjust reception; otherwise, if with a cause, namely, to redeem an unjust vexation: provided that there is a probable danger that otherwise a manifest injustice would be inflicted upon him; then this is not corruption, but a precaution to secure his due right. Thus, commonly Sanchez, in his *Consilia*, book 3, chapter 1, paragraph 3; Lugo, book 3, paragraph 136; Mollerus; Cordes; Paludanus, etc., and Salmeron, chapter 1, paragraph 89, against Leander, etc., in the same place, paragraph 90. Nor do these laws prohibiting such gifts stand in the way; for the laws intend to prevent those who give gifts from corrupting the judges, but not from obtaining a just judgment. It should be noted that the one who gives gifts may, after the judgment has been rendered, seek redress in a higher court against that judgment, and the judge...

[*Latin ed. p. 415*]

Certainly, before the judgment, he is bound to restore it, according to chapter Non sane 14, question 5, 213. It must be noted that a secular judge who commits bribery (that is, who, being corrupted by money, renders an unjust judgment) is deprived of his dignity, is rendered incapable of further judging, and is punished by relegation; moreover, he is considered infamous and is bound to restore triple the amount as a penalty, and all damages to the injured party. This applies in a civil case. But in a criminal

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case, where he condemns an innocent person to death, he is punished with the penalty of death. However, an ecclesiastical judge is suspended from office for a year and may be punished with other penalties. See Salm. c. i. n. 94. He who corrupts a judge so that he pronounces an unjust judgment is punished with the same penalty as the judge, as mentioned above. Thus, the Doctors commonly agree, as seen in Sanch. de matr. lib. i. d. 54. n. i. Furthermore, Farin and Menoch add that he who corrupts also loses the right to demand restitution. Those who give or receive gifts in order to obtain favor or justice from the Apostolic See incur, in addition, an excommunication reserved to the Holy See; and those who receive are bound to make restitution; and clerics are deprived of all office or benefice. See Salm. l. c. n. 88, Resp. 2º. If opposing opinions appear equally probable, it is not permissible for one of them to adjudicate the entire matter according to his own judgment, since both...

[*Latin ed. p. 416*]

"He shall have equal right, but he will suggest a compromise, indeed, he will even command in a case that is too intricate (otherwise it is not permitted), and he will award to one half and to the other the other half of the right or of the thing about which the dispute is, remembering meanwhile the axiom that, if the rights of the parties are obscure, it is better to favor the defendant than the plaintiff. Ib. Bon. de peccatis, d. 2, q. 4, p. 9. " 214. "Question 2: To what is the judge who rendered an unjust sentence bound? " Answer 1: If he did so through deceit or (as I said, d. 1, art. 1) through great incompetence, he has made his case his own, that is, he has transferred the damage to the injured party, to whom he is bound to make restitution. Bon. d. 19, q. 2, p. 4, from S. Th. etc. See above, d. 10, art. 1. " Answer 2: If, otherwise, he is worthy of his office (although he obtained it by seeking it, neglecting others more worthy), and he erred through forgetfulness due to human frailty, he is not bound in conscience to make restitution from his own resources, since he has not inflicted a formal injury, nor has he received any advantage from such a sentence, or rather (according to others), since he has not committed a theological fault: he must nevertheless revoke the sentence, if he can do so without serious inconvenience. Laym. lib. 3, t. 6, c. 2, n. 11. " 215. "Question 3: Does an unjust sentence of a judge bind in the forum of conscience? " Answer: An unjust sentence, by its very nature... "

[*Latin ed. p. 417*]

either through the omission of a legal element that is simply necessary; or if it is carried out through falsely alleged and proven facts; or through the injustice of the judge, it has no force in the forum of conscience, and remains with the injured party, even if it does not appeal, and it is permissible for it to recover its rights, if it can do so without scandal. *Summa Theologica*, Second Part, Question 2, Article 4; *Trullorum*, Book 8, Chapter 1, Canon

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7. The reason is because a judgment binds in conscience only to the extent that it has the character of a judgment, that is, as a determination of the law and a definition of justice. "I said 'in the forum of conscience': because in the external forum, where what is considered is not so much the truth of the facts as the legal proof, a judgment rendered must be observed, in order to avoid scandals and inconveniences; and even after the term within which an appeal was permitted has elapsed, the action is not granted to him; because the law so provides, both as a punishment for negligence, and for the public good, so that there may be an end to lawsuits. *Trullorum*, Book 8, Chapter 4, Canon 7, according to *Sayr* etc."

1. He whose goods have been unjustly adjudicated to another through a manifestly unjust judgment, can (unless the other has justly prescribed) recover them through a secret compensation; because he is recovering his right. *Ibid.*

2. He who, knowingly, has received goods in bad faith through an unjust judgment, is always bound to restore them and can never prescribe the right to them, because they are his; and a possessor in bad faith never prescribes, but is, on the contrary, bound to pay expenses.

[*Latin ed. p. 418*]

1. He is bound to restore and compensate for damages, even if the injured party has not brought a lawsuit, since he does not thereby renounce his right.

2. He who, in good faith, requests something from a judge and receives it, and understands, before the time for prescription has expired, that the sentence was unjust, is bound to restore it, but not the expenses. If, however, he possessed the thing in good faith during the necessary time for prescription, he is not bound to restore it; because he has legitimately acquired ownership by prescription. *Salon., Sayr., Trull. L. c. 216.*

3. *Question: What is permitted to a judge concerning gifts?*

4. *Answer: Although the acceptance of gifts by a judge sometimes involves sin, either through scandal or through the danger of perverting justice, nevertheless, he acquires ownership of what is received, according to the law of nature.* (This is common and certain. *Salm. de rest. c. 1. n. 109.*)

5. *Answer: Although positive law may prohibit the acceptance of gifts, the one who receives them is not bound to restore them before the judgment of the judge, unless the law expressly states that the acceptance is not only illicit, but also invalid.* *V. Bon. in VIII. pr. q. 2. p. 8., Laym. lib. 3. tr. 4. c. 4. n. 9. et 10.*

6. *Question: Here, is the judge bound to restore what he has received before the judgment of the judge? The first opinion, which is held by Soto,

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lib. 4. q. 7. art. 1. ad 2., and by Tapia, Cord., Rodr., Arag., etc.*

[*Latin ed. p. 419*]

In the writings of Salm., book 1, chapter 13, paragraph 1, number 172, it is affirmed, according to the laws of the law of nations, concerning treaties, the law "Si plagii," concerning obligations, etc., that such agreements are declared null and void. And this opinion is supported by the Doctor of the Church, who in the Second Part, question 62, article 5, ad 2, says: "And because he who receives, receives against the law, he ought not to retain it." The second opinion denies this, and Lugo, book 18, number 54, Lessius, book 2, chapter 14, number 54, and St. Antoninus, Palearius, Bonaventure, Navarrus, Azorius, Trullius, and others, as cited by Salm., number 170, hold this view, calling it equally probable. The reason is that this restitution is not due by natural law, as stated in book 3, number 712; nor by positive law; because the aforementioned laws and others are either understood to pertain only to the external forum, or to restitution as a penalty for a crime, for which a judgment is always required, even if it does not inflict the penalty, at least to declare the crime. Both opinions are sufficiently probable.

Thirdly, if a judge unjustly extorts gifts, refusing to do what is just and what he ought to do, unless these gifts are given, he is bound to restore them: just as also if something is given to appease vexation, for example, so that he may not unjustly favor the opposing party, or so that he may not unduly delay the case; although in this case, it may sometimes be presumed that the giver releases the obligation to restore. Laymann, book 2, from "De Gubernatione et Rebus Ecclesiasticis."

Therefore, it is certain and commonly held among Doctors of the Church, that...

[*Latin ed. p. 420*]

Whoever receives something in order to do, or to omit, that which he is bound by justice to do or omit, ought to restore what was received. Thus, St. Thomas [Summa Theologica], Palearius, Lugubilio, Bona, etc., citing Salmeron, *De restitutione*, chapter 1, number 177. I have said "by justice," because he who is not bound to do something by justice, but by charity or another virtue, may lawfully receive a price for it; since that which is promised is estimable by a price, as rightly hold Sotelo, Bona, and Lugubilio, book 37, number 67, and Salmeron, *De restitutione*, chapter 1, number 185, against Lessius, Trullius, etc., in the same place. Therefore, a judge, who is bound by justice to render just judgments, is certainly bound to restore the price received for rendering a just judgment; and this even if he received it not from one of the parties, but from an outsider, such as a friend or relative, as is more truly held by Lugubilio, book 37, number 125, Tapia, Rebellio, and Salmeron, book 1, chapter 1, number 183, against

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Sotelo, Banniza, Ledo, Diclario, and Villalobos, from the same chapter. But whether a judge is bound to restore what he received for rendering an unjust judgment, see what was said in law 3, number 712. But from this arises the question: whether, when justice is doubtful, or of equal probability, so that the judge may render a judgment in favor of the party he prefers (according to the opinion of some whom we have mentioned, number 210, see), the judge is bound to restore what he received from one of the parties, so that he may render a judgment in favor of that party.

[*Latin ed. p. 421*]

It is certain that such an acceptance is illicit, as stated in proposition 29 of the condemnation by Alexander VII, which reads: "When the parties have equally probable opinions, the judge may accept money in order to render a judgment, favoring one party over the other." However, the first opinion denies that the acceptance is invalid by natural law; because the judge receives something in order to do that to which he was not bound by justice. Thus, Lessius, book 2, chapter 14, paragraph 64, and Trullius, Fagius, etc., call it probable; and therefore, they say that, if there is no particular law, restitution is not due. The second opinion, to which I subscribe, contradicts this; because the judge always renders a judgment, exercising an act to which he is bound by justice: therefore, he cannot accept anything for the judgment he renders, since he is bound by justice to do so. Thus, Daniel, Palafox, Molina, and Covarrubias, with Salmeron, in *De restitutione*, chapter 1, paragraphs 181 and 217.

Regarding the fee of a commissary or executor, the question is asked whether, if a commissary is sent to carry out several executions, he can demand the full daily fee from each debtor. Lugo, in *Disputationes*, 37, paragraph 138, and Lessius, book 2, chapter 24, paragraph 28, affirm this, in the same way that one who hires his services for someone's business could demand payment from another for another business. But Sanchez, in *Consilia*, book 3, chapter 1, paragraph 13, Tannus, Daniel, etc., with Salmeron, in *De officio*, chapter 1, paragraph 96, deny this.

[*Latin ed. p. 422*]

Those who say the contrary are entirely mistaken; for, as they argue, the daily wage is not given to the commissary for the number of executions, but for the work of each day; therefore, he can only demand his ordinary wage, and even something more, if the labor, due to the number of executions, is extraordinary, as Salm rightly notes, number 96, and others. However, it seems certain, with Sanchez, in the cited passage, book 24, number 1, and with Arag., Salon., Sot., and Salm., numbers 68 and 69, that the judge cannot divide the fee with the executor (and much less can the executor divide with another, as they say; but this is not pleasing): because the judge is bound by his office to choose the commissary; therefore, for such a choice,

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he cannot receive any price.

THIRD DOUBT. WHAT IS THE OFFICE OF AN ADVOCATE?

218. What is required in an advocate.

219. By what things is one prohibited from exercising the office of an advocate.

220. What is permitted to an advocate:

221. Whom must an advocate defend?

222. Can an advocate defend a less probable cause?

223. When is an advocate bound to make restitution?

224. Is it permissible for an advocate to agree on a price, once a lawsuit has begun? Or on a share of the lawsuit?

225. More things to be noted concerning the advocate's fee.

226. When does an advocate sin against his office?

[*Latin ed. p. 423*]

218. I suppose, according to all, that in a lawyer, four things are required: namely, suitable knowledge, justice in the cause, fidelity, and a just price: which, if it has been fixed, it is not permissible to receive more than this; where it has not been fixed, a natural just price suffices, as stated by Boni.

219. But above all, it must be noted that it is forbidden for the impotent, the infamous, and also for monks, to exercise the office of a lawyer, unless there is a benefit to the monastery and the permission of the prelate, according to c. Ex parte, De postulando. Also, for priests, whether in the secular or ecclesiastical court, according to c. Ex sacerdotibus, Ne cler. vel mon., unless it is a cause of their own, or of their own church, or of the poor, or of relatives within the fourth degree, provided that these do not find another lawyer who is equally suitable. However, in a criminal case, it is never permissible for priests to act as lawyers before a secular judge: Sanch., Silv., etc., with Salm. de offic. cap. 4, n. 5. The same is said of clerics in sacred orders, or in minor orders, if they are beneficed, unless they lack sufficient property for their sustenance, as stated by Sanch. c. 1, d. 4, n. 7, Panor., Lancell., Silv., and Salm. n. 7 and 8. If anyone from among these, once or for these reasons, were to act as a lawyer against this prohibition, they would not sin gravely; otherwise, if it is done deliberately, as stated by Sanch., etc., with Salm. n. 10.

[*Latin ed. p. 424*]

But it must be noted that, according to the common opinion, it is not forbidden for clerics, but not for priests, to act as advocates in ecclesiastical matters (whether concerning reason, person, or the cause of the Church) in any forum. Thus, the aforementioned authors state this in the same place,

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number 7. And it is clear from chapter 1 of the De Postulis, where only clerics are prohibited from acting as advocates in a secular forum for secular causes. It must be noted, secondly, that clerics without a benefice can plead any civil cause in any forum. Whether they can do so in a criminal case is affirmed by others apud Salm., number 9; but it is safer to deny this, according to chapter 9 of Ne cler., etc., and chapter 1, distinction 51. However, it is probably permissible to defend the accused, as Sanchez states in book 6, chapter 7, division 3, with Navarrus, because the texts speak of defending the plaintiff. 220. "Response: 1. It is not permissible to undertake a case knowingly to be unjust; but in civil cases, one can defend either side, even the less probable, provided that the client is warned of the lesser probability. Vasquez, Salas, Lugo, and Diaz, volume 4, page 2, rule 4. Because both sides have the right to present their reasons in court, therefore also the advocate has the right to defend; and it is not always true that what appears more probable is so, and perhaps the judge will have a different judgment. Bonaventure, De Peccatis, division 2, question 4, page 9, and above, book 1, chapter 2, division 2, and in the precepts, division 10, question 1, page 4."

[*Latin ed. p. 425*]

I have spoken of civil matters; for in a criminal case, it is not permissible to defend the interests of the plaintiff, who in such a case gravely sins against the accused; therefore, neither may the advocate. Fill., book 40, chapter 1. Nor when the plaintiff, acting against the possessor, knows that he can prove nothing, but the matter remains always doubtful; because then the possessor is unjustly vexed, for whose sake, then, must the judge judge? As Lugo de just., d. 41, n. ..., Salm., in t. 2, d. 1, section ultima, n. 108. "Response 2: In a criminal case, one can even defend the accused, so that he may escape death or another penalty, because the accused is not bound to punishment unless he is convicted; therefore, he can avert it, either by himself or through another, until he is convicted. Bon., d. 10, q. 3, p. 4, n. 7. "Response 3: The advocate is bound to defend the poor in extreme (even with a grave, but not most grave, personal inconvenience, as St. Thomas [II-II, q. 71, art. 1], when it is not immediately apparent how the poor can be aided in another way; also Sanch., Paul., and Salm., de offic., c. 4, n. 20 and 21) or grave necessity, without charge; but without a notable personal inconvenience. The reason is the law of charity. Nav., Caj., Less., Fill., Bon., loc. cit. (However, Nav. and Caj. deny that the advocate is bound to defend the poor in matters involving mortal danger. But it is truer to affirm this, as do Sotus, Val., Tol., etc., with Salm., ibid., n. 25, when the advocate...)

[*Latin ed. p. 426*]

He possesses what is superfluous for his station. Furthermore, the advocate is bound to defend the causes of the poor in matters of common

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concern; however, it suffices if he himself contributes something from his superfluities, understanding by this both time and resources.) » 222. A great question exists as to whether an advocate can defend a less probable cause. It is commonly held that he can defend the accused; however, Val., Silv., Marin., etc., apud Salm. de offic. c. 4. n. 37, state that he cannot defend the plaintiff with a less probable opinion. Others, however, more commonly with Bus., as Lugo d. 41. sect. 1. n. 8., Sanch. dec. 1. c. 9. n. 52., Azor., Villal., Lorca, etc., grant to advocates the right to defend both the plaintiff and the accused in a less probable cause; because if anyone can lawfully litigate with a probable argument, then another can also defend him, provided he informs his client of the lesser probability of his cause. Both opinions are called sufficiently probable by Salm. n. 48, in fine, but I adhere to the second opinion, as do others. The reason is, firstly, because a less probable opinion can become more probable over time; secondly, because often an opinion that appears less probable to the advocate, appears more probable to the judge. However, Lugo, Mald., Diana, and Lorca apud Salm. n. 36, note that this is more advantageous if the probability lies in the law; for if it lies in the facts, even in equal probability.

[*Latin ed. p. 427*]

(quod tunc omnino favendum est reo) Commonly, it is said that it is not permissible for an advocate to defend the plaintiff. Salm. d. n. 35 notes, with Lugo, l. c., that in a case of equal probability, it is permissible for the common law among Doctors to advocate either for the defendant or the plaintiff. 223. § 1. An advocate who knowingly defends an unjust cause (or who culpably ignores that the cause is unjust; Salm. d. c. 4. n. 23) is bound to compensate for all damages resulting therefrom. Therefore, he must restore to the opposing party due to the sin of commission; because he was the cause of the damage to that party (and likewise, if he defends a doubtful cause and obtains victory through fraud; because injustice is present with respect to the opposing party); but he is bound to restore to his client due to the sin of omission; because by his office, he was obligated to warn the ignorant person of the injustice of the cause. I add that, if it was known to the client that the cause was unjust, he is not bound to restore to him. Bon. d. ro. q. 3. p. 4., Less. lib. a. c. 31. d. 8., Fill., Laym., Tann. q. 4. d. 6. n. 127. » 2. Similarly, to sin and to be held liable for restitution when defending a just point of an unjust cause, in order to vex, hinder, delay, or pervert the opponent, is taught by Trull. lib. 8. c. 5. dix. 3. from Caj., Sayr., etc.; because he is considered to be defending an unjust cause. » 3. When the cause has almost nothing...

[*Latin ed. p. 428*]

It is so doubtful that there is scarcely any moral hope of obtaining [the desired outcome], because it is always rejected by judges; therefore, it is not

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regularly permissible to undertake [such a case]; firstly, because it causes the client to lose time and money without any benefit; and secondly, because such a case is generally not considered to have any probability of success. Lugo, *De Justitia*, book 41, section 41.

However, when a client has a good right in a matter of possession, but not in ownership, some affirm that it is permissible for an advocate to defend him in a possessory action (provided that the matter of ownership is not being litigated), while others deny it. See Fagius, *In Pandectis*, book 8, chapter 47, paragraph 15; Molina, *Tractatus de Justitia et Jure*, book 1, treatise 2, section 81; and Lugo, *De Justitia*, book 41, section 10.

Therefore, some say that it is permissible for an advocate to defend such a client, because in that case, he is only permissively cooperating with the client's sin, while exercising the office of a consultant before the judge. But Lugo, book 41, section 10, more truthfully contradicts this, as do Molina, Fagius, Medel, etc. The reason is that, just as the client sins by retaining the thing, so too does the advocate, by cooperating in that retention. However, the advocate is not acting on behalf of the judge, but of the client.

4. The advocate, before undertaking a case, is obligated to examine its fairness and probability, and to honestly inform the client of this; if, however, he involves the client in expenses through false promises or an empty hope of victory, he is obligated to make restitution; as Bonaventure states in *De Peccatis*, book 2, question 4, paragraph 94: and also concerning its quality and condition.

[*Latin ed. p. 429*]

1. If the advocate has failed to indicate the cause or the danger of losing the case, and the client, knowing this, would not have commenced the lawsuit, the advocate is bound to compensate for damages, according to Barb. d. 4. c. 29., which states, "The condition of the possessor is better, as long as it is not certain that damage has been caused."

2. If it is doubtful whether, in that circumstance, the client would have commenced the lawsuit, and this cannot be ascertained with due diligence, the advocate is not bound to compensate for damages.

3. If the advocate states that the client's cause is entirely unjust, he is bound to compensate for damages if the client, knowing the cause is doubtful, would not have commenced the lawsuit. (Bon. l. c.)

4. If, in the progress of the case, the advocate sees an injustice, he is bound to promptly warn the client and advise him to desist; otherwise, he will be obligated to make restitution of damages, because, having been engaged for a fee, he is bound by justice to warn. (Tand. l. c.)

5. Neither the advocate nor the judge can suggest a settlement with damages to either party; because a settlement is only valid when the matter is in doubt. If, however, he induces the client to a transaction without damage,

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deception, force, or fear, he is not bound; because he does no injury to anyone. (Val., Azor., Less., Laym., Bon. l. c.)

6. He cannot be absolved who is prepared to undertake the defense of any cause whatsoever. (Sayr. lib. 12. c. 23. m. 18. § 224.)

7. It is not permissible to agree with a client about a price after the lawsuit has begun, but either before it has begun, or after it has ended, according to the chapter.

[*Latin ed. p. 430*]

Infames, 3, question 8; because the client, after having shown his resources, is compelled to pay any price, lest he be betrayed. (However, if the advocate proceeds without deceit and the price is just, he does not sin in agreeing upon it, even in the midst of a lawsuit; thus, Salm., book 4, chapter 57, with Navarrus). "Nor is it permissible to settle for a portion of the case, for example, half, a third, or a fourth, for a price, if victory is obtained; because this is gravely prohibited. *L. Sumptus*, titles on *pactis* [Patti], title; also, *De procur.*, chapter; Arcentura, 3, question 7, law. *Qui*. Code of Postulations. The reason is, lest an opportunity be given, through trickery and wickedness, to secure victory. However, in this case, he is not obligated to make restitution, if the just price is not exceeded, and if there is no deceit or fraud. See Silv., on *Advocatus*; Navarrus, chapter 15; Fillius, Layman, Bonaventure, Sanchez, book 5, counsel, chapter 7, paragraph 9, and book 57; Lugubrio, book, chapter. "225. It must be noted that 1st, the advocate cannot demand any price he wishes, but he must demand a moderate price, proportionate to the gravity and difficulty of the case, to the knowledge and dignity of the advocate, and to the custom of the region. If, however, the price is fixed by a law that has been received and not abrogated, that price must be followed; otherwise, the advocate who receives a price notably exceeding that one sins and is obligated to make restitution. See Salm., book 4, numbers 43 and 54. It must be noted 2nd, that if an agreement is reached regarding the price, and the client abandons the case, the advocate...

[*Latin ed. p. 431*]

He may demand the entire fee, if, through his fault, the lawsuit cannot proceed; just as a tenant can rightfully demand payment for his work, if the landlord prevents the work from being completed, as stated in the law. Thus, Salm. c. 4, n. 58, with Sayr. V. dict. lib. 3, n. 342, and v. Peccant. However, this must be understood with the proviso that, if no just cause arises for abandoning the lawsuit, the fee should not be demanded; for this condition is always implicitly understood in any agreement made.

Thirdly, it is very probable that if an advocate agrees on a salary with someone for the entire year, for defending all their causes, he can demand the salary, even if no lawsuit occurs in that year. The reason is that, if in

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another year more lawsuits arise than warrant a larger salary, he cannot later demand a larger salary. Thus, Gutt. with Salm., Corella c. 4, n. 55. This, however, does not apply to ordinary lawsuits and labor; for if an extraordinary lawsuit or labor arises, the advocate is not prohibited from demanding a larger salary.

However, Azor. and Corell. rightly point out the reverse, ibid. n. 56, that if, while a lawsuit is in progress, the advocate falls ill, he must remit a portion of the salary in proportion to the time lost; understand this if the illness is prolonged.

126.º 9.º It is sinful for an advocate to exercise the office of advocate if he is not qualified.

[*Latin ed. p. 432*]

And let it be understood that to act as advocate, *l. Nomini*, in the sense of defending a cause, is a mortal sin according to its nature.

1. If he defends an unjust cause, according to the statements in chapters 1-3.

2. If, through undue delays, illicit subornation of witnesses, etc., he notably favors the opposing party, which has a just cause, see *Nav. c. 25*, *Fill. q. 5*.

3. If he acts as advocate for both parties; for it is contrary to justice that he should equally defend both sides: *Silv., Sanch. cons. p. 2. l. 6. c. 7. d. 7*. However, in certain cases, provided scandal is avoided, this is not necessarily contrary to justice.

4. If, in the same cause in which he is a judge or assessor, he acts as advocate; for it is not permissible to exercise two opposing offices in the same cause: *Silv. v. Advocatus, q. 2*.

5. If, even though he defends a just cause, he produces false documents or witnesses, or false instruments; he does not sin, however, if he deceives the adversary in a manifestly just cause, provided that he uses no falsehood, for example, by alleging false things, see *S. Th. 2. 2. q. 71. art. 7*, *Sanch. cons. p. 2. lib. 6. c. 7. d. 7*, *Trull. l. cit.*

6. If he brings forward false laws or abridged laws, or a condemned doctrine, or valid laws in a false manner, knowingly, prudently, and deliberately.

7. If he seeks delays that are detrimental to the other party and are not conducive to the matter at hand, see *Fill., Trull. l. c.*

8. If he receives an unjust compensation. However, if the law does not set a specific price, it is considered just.

[*Latin ed. p. 433*]

which is held to be the judgment of prudent men, considering the nature of the matter, the dignity, knowledge, and expertise of the advocate, and the

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effort expended, and finally, by custom approved. V. Trull. l. c. d. 5. - 10. o If the contract is usurious or otherwise unjust. 11. o If he ignores (leges) the laws, statutes, and customs of the country (and therefore, if serious damage befalls the client, he is bound to compensate), or does not strive to understand them. » 10. o The advocate sins against justice if he reveals the reasons and grounds of his client's defense, or the secrets of the case, to the adversary, as is proven by others. Fag. in p. 8. c. 47. n. 15. (V. etiam de Lug. l. c. n. 6.), and he is bound to restitution if, because of this, the client loses the case, and would have otherwise won; because he acted contrary to his duty and did not exert due diligence to obtain the case in favor of the client. Az., Fill. etc. ll. cc. However, some limit this, saying that there is a danger that the opposing party may suffer serious and unjust harm; because, they say, anyone can prevent the other from suffering serious harm without suffering serious harm themselves. V. Less. p. 2. c. 31., Azor., Reg., Fill., Laym. lib. i. t. i. cap. 5. n. 18. But this limitation is not admitted by St. Thomas and others, because if, perhaps, the case were to be decided on this point and the accuser were to proceed unjustly; then, they say, the advocate of the accuser should reveal the falsehood, if...

[*Latin ed. p. 434*]

Nevertheless, there is hope for the future, provided the accuser is first warned to desist. See de Lugo, loc. cit.

"The Advocate, if he delays the progress of cases with prejudice to his clients, postpones them, or accepts more cases than he can handle, sins and is obligated to make restitution, as are all those who incur damages through his command, malice, or negligence; however, he is not obligated to use the same diligence in all cases, but rather a greater or lesser diligence, according to the nature of the case. See Bon. in praec. VIII. d. 10. q. 3., Less. loc. cit. 39. d. 9., Laym. vol. i. ch. 5."

FOURTH DOUBT. WHAT IS THE OBLIGATION OF THE REFERENT, SECRETARY, NOTARY, AND PROCURATOR?

227. To what are referents, etc., obligated?

228. When do referents sin?

229. When do secretaries sin?

230. When do notaries sin?

231. Several things to note concerning notaries and notaries.

232. When do procurators sin?

233. Several things to note concerning the procurator's fee.

227. "Answer: All of them are obligated to exercise their office justly and faithfully, whether by virtue of mere good manners or also by oath. Furthermore, they are obligated to know those things that pertain to their

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office, and to use due diligence, providing all that is necessary, and..."

[*Latin ed. p. 435*]

Seeking justice, it has been necessary to appeal to him. Bonaventure, Escobar, and the Common Doctors. "Therefore, resolve the following cases: 1st. They sin if they abuse their offices through hatred or love, hope or fear; if they do not keep secrets; if they deliver to parties or their representatives, or to others, original documents or proceedings which they should not; if they accept a larger fee than is just, or beyond the agreed price; if they advise unjust lawsuits, etc." 228. "2nd. He sins, 1st, if, through lack of diligence or carelessness, he reports poorly or omits something substantial. 2nd, if he is partial and tries to explain the justice of one party more than the other. 3rd, if he reveals his opinion to one party before it is made public, from which serious inconveniences may follow, e.g., the judge being refused." See Escobar. 229. "3rd. The secretary sins, 1st, if he violates his oath. 2nd, if he reveals a secret. 3rd, if he reveals a judgment that has not yet been made public. 4th, if he does not keep the proceedings or judgments, or if, without the judge's order, he shows them to the parties. 5th, if he does not faithfully transcribe the testimonies, either by exaggerating or diminishing, or by changing or inverting them." See Escobar. 230. "The bailiff or public notary sins, 1st, if, without sufficient expertise (e.g., ignorant of common clauses, etc.), he undertakes..."

[*Latin ed. p. 436*]

1. Concerning the duties of a Notary:

2. If he violates an oath.

3. If, in a deposition of witnesses, he adds or subtracts something of no small importance.

4. If he commits a fraud to the minister who transcribes (due to the danger of error).

5. If he negligently keeps the protocols and records, causing harm to the parties.

6. If he delays the progress of cases in order to extort money.

7. If he writes a will for a person lacking the use of reason.

8. If he admits false witnesses.

9. If, through culpable ignorance or malice, he omits necessary formalities.

10. If he does not present a certain testimony, requested by one party and damaging to another; if he prepares a usurious or false instrument, especially to the detriment of another; if he causes processes and cases to be brought before other judges or referees, etc., than those required by the order of that tribunal: because it matters greatly to have this or that judge; Escob. V. Laym. lib. 3. t. 6. c. 2., Bon. in præc. ult. p. ult.

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11. If he violates a secret, for example, by revealing to the opposing party the statements of witnesses before their publication; which teaches that this is a mortal sin against justice, Trull. d. 7. n. 3. ex Nav. c. 25. n. 52.

12. If he conceals instruments from the requesting party, especially those containing legacies. Nav. l. c. n. 35., Silv. v. Tabellio, Trull. l. c.

13. If he conceals records or refuses to provide the requesting party with a transcript of the proceedings.

14. He sins gravely if, having sent an old public instrument or a will, he fabricates another similar one.

[*Latin ed. p. 437*]

231. Regarding matters to be noted: 1st, it is to be noted that infamous individuals, whether by infamy of law or of fact, cannot validly execute instruments, according to Salm. de offic. c. 5, n. 2. Note 2nd, that clerics who hold sacred offices or benefices are not permitted to exercise the office of a notary, nor even in the public ecclesiastical court; Salm. with others, n. 5. Note 3rd, that notaries are not permitted to receive anything from the parties in litigation beyond a just price. However, it is doubtful whether the law, by establishing a fixed fee, obliges them in conscience. Navarrus, Trullius, etc., apud Salm. c. 5, n. 18, affirm that it does, because it is a just law. But Macadam and Fagius deny this, because this law is penal, or at least mixed, and therefore does not obligate in conscience (as Villalobos, Dianus, and others hold regarding mixed laws). Lugo, with Turrian and others, apud Salm. n. 19, also denies it, but for a different reason, namely, because notaries and other ministers of justice must live from the stipends of their own office, and with the passage of time, prices and expenses, according to custom, increase regarding food and clothing; therefore, it is not unjust for them to demand something above the fixed fee, especially if the circumstances of the work and expertise are considered. And Salm. states that the opinion of Lugo seems more in conformity with equity in these times. Furthermore, in general, Doctors teach that notaries sin if, beyond a just price, they receive anything else, even in the form of a gift, from the parties; because such gifts are coerced, according to Ligurinus, Theol. Mor. T. VII.

[*Latin ed. p. 438*]

These things are not spontaneously rendered; thus, Navarrus, Rodriguez, etc., with Salmerón, chapter 5, number 22. However, Salmerón, numbers 24 and 25, with López, Mercade, Rodriguez, Navarrus, note that a notary can rightly receive an extraordinary fee if he performs an extraordinary task, namely, if he is compelled to act more quickly than is proper, to deliver a document urgently, to go to a distant place, or to work at night, etc.

232. 5th. A procurator sins: 1st, if he initiates an unjust lawsuit. 2nd, if he

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undertakes more cases than he can properly handle. (Thus, Panigarola and Cajetan, with Salmerón, on the duties of a procurator, chapter 6, number 4.) 3rd, if he receives more compensation than is just. 4th, if he advises the defendant or the opposing party to unjustly deny the truth. 5th, if, through his negligence, carelessness, or other fault, the lawsuit is lost. 6th, if, in the name of a party, he makes a plea without the party's particular knowledge, with the risk of being condemned. 7th, if he culpably fails to appear before the court, fearing future harm, etc. See Escobedo, Laymandi, loc. cit., Bonaventure, question 3, paragraph 4. 8th, if he leads the parties to an inequitable agreement. 9th, if he delays the case, or corrupts the judge, requests irrelevant terms or superfluous delays. 10th, if he presents false witnesses. See Sayr, book 12, chapter 14; Fillian, volume 40, chapter 16, number 294; Trull, book 8, chapter 6, doubt 1. (See Salmerón, loc. cit.)

233. Question: 1st, if a procurator has an advocate or a notary who works for free,

[*Latin ed. p. 439*]

Let him serve, so that he may be able to retain the just price owed to him. Response: Negatively, if the advocate or scribe serves more for the benefit of the client, as Bonaventure and Panormitanus state, etc., citing Salm. c. 5, n. 6. However, if they serve for the benefit of both the procurator and the client, Bonaventure and Bassianus state ibid. that then even he may not retain anything; because in doubt, the condition of the client, who possesses, is preferred. But (I add), this applies in a doubtful case; for if a true remission is made even with the intention of the procurator, why should he not be able to retain at least a part of the price, according to the judgment of prudent men? Understand, however, that unless the donation is absolutely made to the client, even if it is for the benefit of the procurator.

Question 2: If a procurator substitutes another procurator, can he transfer a part of the salary to him and retain a part? Salm. c. 4, n. 7, affirms this probably, citing Sayr, Ripa, and Anglerius, provided that he warns him about the actions to be taken and, moreover, undertakes the risk of the cause himself, should the cause be lost due to the negligence of the substitute. For the procurator is bound even for a slight fault in the defense of the cause; here, a double just contract intervenes, one with the client, the other with the substitute.

Question 3: If the procurator himself offers his services to defend a case, can he demand a just price? Some deny this; but Bassianus affirms, unless he has from the beginning the intention of giving his services freely, or unless the client is a friend or...

[*Latin ed. p. 440*]

"If a relative, and one who undertakes the case, has not considered anything about the price; then, they say, the Doctors [of the Church] intended

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to be understood as defending [the case] gratuitously. But I, being less wise, say that the advocate, unless he certainly knows that he has given his labor freely, can always receive a just price; for no one is presumed to have given [something] freely, unless it is established; because to give is to lose. Indeed, even if he had intended to give [something] internally, unless such a gift has been accepted by another, he can still demand a salary, according to what was said concerning contracts, book 3, number 725. However, the client, if the advocate is a friend or relative, can then justly presume a donation, as Trull. and Bass. say, apud Salm., chapter 5, number 10. And I would not even agree with this doctrine, unless other circumstances concurred that would make the presumption of a donation certain.

Question 4th: If a litigant sends an advocate to a lawyer to have some petition drawn up or advice given; but because the matter is easy, the advocate himself prepares the writing, and the lawyer only signs it: can the advocate retain a portion of the price that the client sends to the lawyer? Bon. and Trull. affirm, because, as they say, no one is harmed thereby; neither the lawyer, because that portion is already sufficient for his reward; nor the party, who already has what he seeks. However, Salm. denies this, chapter 6, number 11."

[*Latin ed. p. 441*]

Concerning the telephone: because the procurator acted against the will of the client, who, if he had known that the contract was made solely by the procurator, would have given a lower price than he did: but this reason proves nothing other than that the procurator ought to retain a smaller pension for himself, and not none at all.

FIFTH DOUBT. WHAT IS THE DUTY OF THE ACCUSER?

234. What things must be observed in order to preserve the justice of the accuser.

235. What is required for a legitimate accusation.

236. Whether and who is obligated to accuse or denounce another.

237. Whether those who are bound by the restoration of a penalty are also bound by duty to denounce, as are the custodians of the customs house, if they do not denounce.

238. Who are prohibited from accusing.

239. When is it illicit to denounce a crime.

240. Whether fraternal correction ought to precede accusation.

241. When is it permissible to accuse without prior warning.

242. What should be noted concerning the evangelical denunciation.

243. Question 1: Whether it is permissible to bring a hidden crime to the

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attention of the prelate, as to a father, after omitting correction.

244. Question 2: Whether a crime can be denounced to the prelate, if the guilty party has been reformed.

245. Question 3: What is to be done in the case of doubt whether correction is better done by the prelate.

246. Question 4: Whether it is permissible to renounce the right of fraternal correction.

[*Latin ed. p. 442*]

246. What should be noted concerning judicial denunciation.

247. Whether those who are evangelicals can be compelled by a prelate to make a judicial denunciation.

248. What should be noted about warnings.

249. Whether there is an obligation to denounce heretics when there is a danger of grave harm.

250. Whether we are obligated to denounce heretics who are associated with us.

251. Which crimes should be denounced as suspected of heresy.

252. Whether blasphemers should be denounced, and when.

253. Whether the superstitious should be denounced.

254. Whether those who are negligent in denouncing should be denounced.

234. "In order that justice may be preserved in an accusation, three things must be avoided. First is calumny, that is, the imposition of a false crime or of something which cannot be sufficiently proven: and this incurs the obligation of restitution, and of undergoing either the penalty of *talio* (but this penalty has lost its force according to general custom, as Cov. and Gom. say apud Salm. de offic. c. 2, n. 4), or another, at the discretion of the judge. Second is prevarication, that is, collusion with the accused and a feigned accusation only; which, in criminal cases, if it results in damage to the republic, incurs the obligation of restitution. Third is tergiversation of an accusation already begun, without just cause. I add that, with a cause, for example, because of the command of a prince or a judge..."

[*Latin ed. p. 443*]

That in a case of this nature, a person should not be punished or discredited, or that a substantial defect exists in the accusation, it is permissible, indeed, he is obligated, if, in the course of the proceedings, he recognizes that he has erred, begins to doubt the crime, or sees that he cannot prove it. *Fill., t. 40, c. 7, n. 705.*

Note: 1.º That five things are required for a legitimate accusation: 1.º That it be made in writing, or at least written down by a notary. 2.º That the

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name of the accuser and the accused be stated therein. 3.º That the nature of the crime and also the name of the accomplice, if there is one, be stated, in the case of crimes such as adultery, sodomy, and the like. 4.º That the time, place, and also the hour of the crime be stated, if the accused requests it. 5.º That the accuser sign the accusation, so that he may be obligated to prove the crime, otherwise, to suffer punishment. And from this, the difference between a fraternal denunciation, a judicial denunciation, and an accusation must be noted. A fraternal denunciation is made to a superior as to a father, so that the accused may be reformed. A judicial denunciation is made to a superior as to a judge, so that the accused may be punished, but without the obligation to prove the crime. An accusation, however, is made to a judge so that the accused may be punished, with the obligation to prove the crime; and therefore, this must always be done in writing. Thus, *DD. comm. V. Salm. de offic. cap. 2, ex n. 2.*

236. Question: Is anyone obligated to accuse another?

[*Latin ed. p. 444*]

Response 1st: It is rarely the case that a private individual is obligated to do so, both because of the fear of repercussions and because otherwise the tribunals would be filled with accusations, causing disturbance to the state. I said "a private individual"; for if someone receives a salary from the republic for this purpose, e.g., a tax collector, then he is obligated by justice, and consequently, if he fails to make an accusation, he incurs damages. Fulgentius, Bonaventure, in 8th part, dist. 10, question 3, paragraph 1. I said "rarely"; for if it involves the public good, e.g., if treason is imminent or a grave harm to an innocent person cannot otherwise be averted, and the crime can easily be proven, then a private individual is also obligated to accuse, or at least to denounce; however, this is only out of charity, which does not involve restitution. Fulgentius, Bonaventure, loc. cit. But all of this must be examined more thoroughly. Question: Are we ever obligated to accuse or denounce another? The answer is affirmed in the following cases. And 1st: when it is a matter of avoiding common harm and the crime can be proven: then, as St. Thomas teaches in 2-2, question 68, article 1, there is an obligation to accuse. Crimes against the common good are heresy, rebellion, counterfeiting of money, murder, and theft committed by assassins or highway robbers: others add the suborning of votes in elections, and Lugo adds the sin of a religious person which probably causes harm.

[*Latin ed. p. 445*]

It brings detriment to religion. If, indeed, the crime cannot be proven, it suffices that the accused be denounced. And it is commonly seen that Doctors conclude that, in these times, it is sufficient to denounce a crime, lest men be deterred from denouncing crimes by the fear of incurring punishment, if that crime is not proven, to the grave detriment of the common

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good. Thus, Lugo, *de just.*, book 58, chapter 1, number 2; Sanch., *cons.*, book 6, chapter 2, book 2, number 2; Caj., Sot., Bann., Trull., Villal., etc., apud Salm., book 2, chapter 2, number 10. And thus, servants and children are held to denounce the crimes of their lord and father, if they are endangering the common good, as Salm. states there, with the same reasoning. If, however, the crime has already been committed and no damage is imminent, because the perpetrator is already known to be condemned (except for the crime of heresy), there is no obligation to denounce it, as Tol., Fill., etc., state apud Salm., number 11, 2. We are obligated to denounce a crime if a grave damage threatens an innocent person. But that we are also obligated to accuse the accused, if we can prove the crime, as Tol., Sot., etc., state apud Salm., number 12, I believe it is difficult to occur, since this obligation is only from charity, which does not obligate when there is a grave inconvenience. For those who accuse often suffer; all the more so if denunciation and accusation alike can sufficiently prevent damage. Indeed, I add that even...

[*Latin ed. p. 446*]

1. He who is obligated to denounce [a crime] ought to do so, lest he prudently fear suffering a grave detriment, unless a common harm is imminent.

2. Those who are obligated to denounce or accuse [a crime] are those who receive a stipend for this purpose from the Republic or from lords, such as tax collectors or custodians of fields, warehouses, etc. Otherwise, they are obligated to make restitution for the damages which result to the Republic or to the lords due to the omission of the accusation. Thus, Bus. here with Fill., Nav., Bann. etc., commonly in Salona, chapter 2, paragraph 13, pages 237. Whether these are obligated to restore the value of the penalty, if they do not denounce, is affirmed with strong probability by Sotus, book 1, on justice, question 6, article 6 or 9; Laym., book 3, section 5, treatise 2, chapter 7, paragraph 4; Mol., volume 1, treatise 2, chapter 95, paragraph 36; Spor., volume 1, chapter 3, paragraph 59, with Nav., Med., and Salona. The reason is that, by omitting the denunciation to which they were obligated by reason of their office, they are the cause that the treasury or the lord does not collect the penalty to which he had a right.

3. However, it is sufficiently probable that Less., book 2, chapter 13, paragraph 73; Lugo, on contracts, chapter 37, paragraph 102; Salona, on restitution, chapter 1, paragraph 136; Sanch., on marriage, book 10, chapter 8, paragraph 14, with Nav., Met., Angl., Salona, Bann., Lop., Man., Graff; also Diana 3, page, treatise 6, rule 35, with Vasq., Tann., Azor., Arag., deny this. The reason is that the penal law does not intend that the treasury or the lords should be enriched by fines, but that they themselves should be kept

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safe and unharmed.

[*Latin ed. p. 447*]

Let transgressors be punished. However, indirectly and by accident, the law provides the right to impose fines, but only after a judgment; for before that, neither the treasury nor private individuals have any right to punishment. Therefore, fiscal officials sin against legal justice by not reporting offenses, but they do not sin against commutative justice with respect to the fine; and therefore, they are only obligated to compensate for the damage to the treasury that merchants should have paid. The same is said by Lessius in the cited passage, and it seems probable to Spotorno in the aforementioned work, and Lugo in *De Justitia*, book 3, chapter 37, paragraph 97, along with Salas, etc. (contrary to Suarez, Augustine, Silv., etc., in the same place), that the judge does not render a judgment regarding the fine against convicted defendants. The same is held by Salm in *Tractatus*, book 11, chapter 2, paragraph 76, 4. Sometimes, someone is obligated, indeed even to accuse, a delinquent, if this is necessary to avoid or to compensate for damage to one's own family, which otherwise would remain dishonored or deprived of sustenance. Thus, Sanchez in *Consilia*, book 6, chapter 3, doubt 26, paragraphs 4 and 7, and Soto, Bannus, Navarrus, etc., cited by Salm in paragraph 14. And Sanchez, with Gomar, notes in the same place that the judge can sometimes compel the injured party to at least declare who has harmed him, so that proceedings can be initiated; understand this when, in truth, a common damage is threatened, such as conspiracy, error in faith, and similar things.

[*Latin ed. p. 448*]

But, with the exception of these cases, no one is obligated to accuse another; and although it may be possible, if one accuses without hatred and with zeal for justice; nevertheless, it will be difficult to be free from the affection of vengeance for one who would bring an accusation against his own offender, since the accusation aims at the punishment of the offense, as we said in the preceding chapter, book 2, number 29, see *Licet*. 238. » Response. 2nd. Accusations are prohibited from: 1st. Excommunicated persons, traitors, and infamous individuals; and this is as a penalty for the crime. 2nd. Sons, servants, their parents or masters, out of reverence. 3rd. Clergy in a case of bloodshed, due to impropriety. Less, book 2, chapter 3, section 5. » Question. Who are prohibited from accusing? 1st. Excommunicated persons, infamous individuals, public concubinaries or usurers, accused of major crimes, unless they first demonstrate their innocence; also, underage females. However, this exception applies: 1st. If these individuals are pursuing a case that is their own or that of their family, up to the sixth degree. 2nd. If the crime is against divine or human law, the violation of which harms a third party. 3rd. If the crime is against the common good.

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Whoever, however, even if he cannot accuse, can nevertheless denounce. See Salm. de offic. chapter 2, number 26. - 2nd. Sons cannot accuse their parents, nor vice versa, nor servants their masters, unless the crime is *lèse majesté* or heresy. Salm. number 27. - 3rd. Laymen...

[*Latin ed. p. 449*]

Clerics cannot accuse other clerics, unless the cleric is a squanderer of the Church's goods, or a heretic, a simoniac, a sacrilegious person, etc., or unless a layperson is pursuing his own or another's cause. Furthermore, clerics cannot accuse laypersons or religious [men]; these can only be accused by religious [men] of the same order. *Salm.*, n. 28. But here, the question is whether a religious [man] can accuse his superior. Affirmative, from *Ex parte tua, de accus.* For there are three things mentioned there: 1. that monks are not to be repelled from accusing their superior before a regular judge or one who is competent; 2. that then, expenses for the litigation concerning the monastery's goods are to be provided to them, if they do not have their own funds; 3. that monks cannot accuse laypersons without the abbot's permission. *V. Salm.*, c. 2, n. 30 and 31. 4. An enemy is repelled from accusing the one who has committed a fault, from *Cum oporteat, de accus.* And this applies even to crimes, except as mentioned above, besides heresy. This is common with *Salm.*, c. 2, from n. 35. The reason is that then, it is presumed that the accusation always proceeds from a desire for vengeance. 5. Likewise, an accomplice is repelled from accusing, from *l. fin. c. de accus.* However, with regard to this, the crimes of heresy, treason, counterfeiting of money, sodomy, infamous theft, and all other things which can be committed without an accomplice are excepted. *V. Salm.*, c. 2, n. 37. 6. Clerics cannot accuse in a case of bloodshed.

[*Latin ed. p. 450*]

From c. Sacerdotum 2, q. 7. But it is doubtful whether they are able to bring charges to obtain compensation for their own injury, or that of their relatives, or of their church. It is affirmed, provided that the cleric (if the matter involves bloodshed) precedes with an express declaration that he does not intend to proceed as a judge to inflict the penalty of blood; then, even if the accused is condemned to death, he will avoid irregularity: this is taken from c. 2, de homic., in 6. V. Salm., c. 2, n. 39 and 40, and below, l. 7, n. 468, ad 3. As to who are included in the term "their relatives," some hold that it includes blood relatives up to the tenth degree, others up to the seventh or sixth, others up to the fourth. But Salm., n. 42, holds that only servants are included in the term "their relatives"; because the text, as mentioned above, grants clerics the right to accuse only their own wrongdoers; therefore, they do not include wrongdoers of relatives. However, Salm. elsewhere, and others with the Council, probably permit bringing charges to repair the damage of relatives up to the fourth degree. See d. n.

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468, ad 3, 239. » Resp. 3º. You are not required, indeed you should not, even with the aforementioned precept, to denounce the crime: 1º if the offender has been reformed without danger of relapse, and satisfaction has been given to the injured party, and no danger threatens others, and the crime is not notorious; because otherwise, the near ones would suffer infamy. See above, book 2, chapter 2, d. 4. - 2º If the crime is known...

[*Latin ed. p. 451*]

Under a natural secret, such as when acting as a counselor, advocate, etc. However, this does not apply if the one to whom the secret is entrusted is unjustly persecuted or vexed, nor if he is unwilling to cease such persecution. Lugo de just. d. 14. n. 242. - 3rdly, if a grave danger to one's honor, life, or property is imminent. 4thly, if one is compelled to prove something and is unable to do so. See Lugo, dist. 38, sect. 2, no. 240. The question arises here whether fraternal correction should precede the accusation. Several distinctions must be made. 1stly, if the crime is public, because it is accompanied by infamy or notoriety, especially if it is committed before many people, in public, then no correction should be given. Thus, St. Thomas [Summa Theologica] 2-2, q. 33, art. 7; Sanchez, c. 2, d. 28, n. 5; Soto, Palud., and Salm., c. 2, n. 20, with common opinion. The reason is that, in such a case, not only must a remedy be applied to the one who has sinned (according to the words of St. Thomas), but also to others to whom the crime has become known. Therefore, the crime must be publicly punished. 2ndly, if the crime is not public, even if known to a few, then fraternal correction should be given if there is hope of benefit; because, in such a case, the common good is not to be considered, but the good of the sinner, who is more easily corrected by a private admonition than by a public punishment, as stated in the passage "Si peccaverit" [If he sins], 2, q. 1. See Soto, Caj., Pal., Less., with Salm., cap. 2, n. 21.

[*Latin ed. p. 452*]

However, Lessius, in book 2, chapter 30, paragraphs 10, 11, and 12, observes, and Palearius agrees, that if you can prove a crime in judgment (for example, through two witnesses), you are then obligated by charity to warn the person before the accusation, so that he may cease from the crime; nevertheless, you do not sin against justice if you accuse, because it always benefits the common good for crimes to be punished. And then the judge is obligated to accept the accusation and proceed with the case; unless he fears that a scandal might result in the republic. Otherwise, if there is no scandal, because the judge would then be obligated by the natural law of charity not to admit the accusation. Thus, Salmeron, chapter 2, paragraphs 47 and 48, and 241. You do not sin, either against justice or against charity, if you accuse without prior warning, in two cases. 1. When the crime is to the detriment of the republic, such as conspiracy, the crime of lese-majesty,

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etc., and especially heresy; for which the following principle, condemned by Alexander VII, is particularly noteworthy: "Although it is clearly known to you that Peter is a heretic, you are not obligated to denounce him; if you cannot prove it." The reason is that in these crimes, fruit is rarely or never expected from correction, and delay can be very harmful. Thus, Lessius, in the aforementioned book and chapter, paragraph 13, and Palearius, Sanchon, Villalobos, Trullius, Bonaventure, and Salmeron, chapter 2, paragraph 22, with others. 2. When you cannot otherwise obtain compensation for the damage suffered, unless...

[*Latin ed. p. 453*]

You accuse the aggressor; for then you can accuse, so that at least through punishment, the injury done to you may be avenged: but let the feeling of vengeance be absent (which, however, I consider to be most difficult); Salona, n. 23, with Sanch., Pal., Trull., etc. It is worthwhile to note something about denunciation, which, as stated above, is twofold: one evangelical, which is brought to a superior, as to a father, for the correction of the matter; the other judicial, which is brought to a superior, as to a judge.

242. And first, concerning the evangelical or paternal denunciation, it should be noted that 1st, if the crime of a neighbor is harmful to the republic or to the community, even if it is hidden, it must be immediately reported to the prelate, without any prior fraternal correction, as the Doctors commonly teach, with St. Thomas, 2-2, q. 53, a. 7, and Layman, 1-3, tr. 3, p. 2, c. 4, n. 4. But if the crime is not harmful to the community, but only to the deliquent himself, then the order of correction given in the Gospel of Matthew 18:15 must be followed, where it is written: "But if thy brother hath committed against thee, go and reprehend him between thee and him alone: if he shall hear thee, thou hast gained thy brother; but if he shall not hear thee, take with thee one or two, that in the mouth of two or three witnesses every word may be confirmed; and if he hear not them, tell it to the church."

2nd, it should be noted that if, after a secret correction, the brother...

[*Latin ed. p. 454*]

If the fault is not corrected, then, before it is made manifest to others, it must be reported to the superior, as to a father, so that he may, paternally, correct it. Thus, St. Thomas, *Summa Theologica*, quaestio 33, article 8, ad 4, citing St. Augustine in epistle 109 to Monachus, whose words are quoted by Layman, *loco citato*, number 6. The reason is that the superior, as a spiritual father, is more suitable for helping a brother than others; nor is it fitting that others should know of the fault before the superior, who can offer a more salutary remedy.

Question 1: Whether it is permissible to report to the superior, as to a

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father, a hidden fault, not harmful to the community, after secret correction has been omitted. Three opinions exist. The first, generally, affirms this, as seen in Anglico, volume 1, *De Denunciationibus*, number 10, and in Gabriel, Rosellius, Turrecremata, apud Layman, book 3, *De Justitia et Traditione*, chapter 4, number 5, who say that this is at least permitted in religious orders for the sake of the common good. The second opinion, entirely opposed to this, as found in Adrian, Cordes, Soto, etc., apud Sanchez, *Decreta*, book 6, chapter 18, number 46, holds that secret correction must necessarily precede. The third opinion, far more common and far more probable, teaches that it is permissible to report a hidden fault to a prudent superior, as to a father, without prior secret correction, if it is hoped that the brother's amendment can be better obtained in this way. The reason is clear, because, as St. Thomas and others say, the end of this precept of fraternal correction is, as we shall see below, another.

[*Latin ed. p. 455*]

This is the charity towards a brother. But this end of charity has a double aspect: one principal, the other less principal. The principal end is that the brother may be reformed; and therefore, correction is prescribed. The less principal end is that, as far as possible, the brother's reputation may be preserved; and therefore, the order of secret correction, to be given beforehand, is prescribed. Therefore, when it is judged that it is more expedient for the principal end, namely, for the reformation of the brother, that correction be made immediately by the superior, the less principal end must cease; and therefore, the order of secret correction should rightly be omitted. Thus, St. Thomas, *Summa Theologica*, II-II, article 13, where the Doctor distinguishes between inquiry, accusation, and denunciation, and says that the end of denunciation must be observed, namely, that the brother may be reformed. But, (he adds), whether, when anyone knows that his brother has sinned, he ought to denounce it to the superior, I say that this must be distinguished according to the conditions of the subordinate and the superior: for, if I know that my brother will be reformed by me, then I ought not to denounce it to the superior; but if it seems that this will be better done by the superior, and the superior is nevertheless pious, prudent, and spiritual, not having rancor or hatred against that subordinate, then it is permissible to denounce it to him, and then he does not denounce it to the Church, because he is not like a superior, but like a person who is progressing towards the correction of his neighbor.

[*Latin ed. p. 456*]

It is to be amended. And a little later, he adds: "Therefore, it must be held as a rule that charity must always be observed in all these matters, and that what seems more beneficial should be preferred. And if this is intended, namely, to amend the neighbor, and he does all that he can for

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the good of charity, then he does not sin by denouncing [him]." The same is taught by St. Bonaventure in Luke: "If he should sin, etc.," chapter 17; and so say Sanchez, decrees, book 6, chapter 18, number 46, with St. Antoninus, Gers, Abul, Salmer, Sa, Silv, Tab, Rich, Ang, Wald, Arm, Graff, Arag, Man, Philiarch, etc., and Laym, book 3, treatise 3, page 2, chapter 4, number 5, with Sot, Henr, Pal, Nav, 244, Question 2. Whether, if the accused has been amended, the crime can be denounced to the prelate. Angl. affirm, see Denunciation, number 10, as do Gabr, Rich, and Turreer, apud Laym, d. n. 5; who say that one should always strive to ensure that the prelate knows of the vices of his subordinates. But it must be denied, with St. Thomas, quodl. ii, article 13, Laym, cited, chapter 4, Sanchez, cited, chapter 18, number 49, and others. Otherwise, it should be said (says Sanchez, ibid.), if it is doubtful whether the brother has been fully amended, or whether the brother is in a probable danger of relapse, or whether the danger of relapse has completely ceased: because then it is certainly permissible to denounce the crime to the prelate, as the advantage of the brother and the good of religion should be considered before a slight detriment to his reputation. 245. Question 3. Whether, if it is doubtful whether...

[*Latin ed. p. 457*]

Correction is more effectively achieved either by the prelate himself, or by the prelate proceeding prudently. Response of Sanchez, cited work, chapter 18, paragraph 47, which states that, unless the offense causes public harm or private injury, a secret correction should precede any other action. However, the following should be noted: 1st, that in cases of doubt, unless imprudence is established, in well-ordered religious communities (as Laym. notes, cited work, chapter 4, paragraph 5, see also), prelates are presumed to be prudent. 2nd, that as Laym. himself notes in the same work, in such orders, hidden offenses of brothers, if they have not yet been corrected or if there is fear of relapse, can more frequently be brought to the attention of the prelate, as a father, without a secret warning; both because prelates are pious and prudent men, who can more effectively benefit through admonition; and because they are more suited to correcting the offense and removing the occasions of relapse. For, as Suar. rightly states in *De Charitate*, disputation 8, section 6, paragraph 12, and Sanchez in book 6, chapter 16, paragraph 50, either the sin of a religious is minor, and in such cases, when the infamy is slight, greater benefit usually results from reporting it than harm to the brother; furthermore, as Suar. says, this custom of reporting minor offenses to the prelate is almost necessary for maintaining the order of the religious community; or the offense of the brother is grave, and in such cases, either the brother has sinned out of

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weakness, and it is better to intervene...

[*Latin ed. p. 458*]

By removing opportune occasions, which another might not be able to provide; or out of malice, and then very rarely is amendment hoped for through the brother's admonition, as Sanch. states there, speaking with Cajetan, who asserts that it is more fitting to doubt that the accused is truly reformed after a secret correction, rather than that he is actually reformed. Suar. and Sanch. rightly add that it is scarcely possible that the crimes of religious men will not result in the greatest harm to religion, both because of the scandal of the brothers, and because of the infamy of religion; hence, Suar. states that all grave crimes can be rightly reported to the prelate, as harmful to the community; indeed, often there is an obligation to report, especially if the prelate inquires; at least, Sanch. says, it is very advantageous that the prelate know the vices of the brothers, so that the dangers of their failings may be better removed. I also add that the greatest inconvenience could easily occur if crimes could not be reported to the prelates before a secret admonition. For if the offender is not reformed from that [admonition] (which, as we noted above with Sanch., is what must be most feared), either you will report the crime to the prelate, and then the accused, easily suspecting your denunciation, will often retain hatred towards you; or you will omit to report, out of fear of this, and thus the crime will not be remedied, scandals will increase, and thus, finally, the good of the community will be corrupted. Therefore, from all of these things, Laym. rightly concludes.

[*Latin ed. p. 459*]

loc. cit. n. 5, at the end: It is rare in religious congregations for subordinates to be equally suited as superiors for correcting [others]: and therefore, in chapter 25, concerning accusations, after having described the order to be observed in the investigation, accusation, and denunciation, it is concluded: "However, we do not believe that this order must be strictly observed concerning regular persons."

Question 4: Whether it is permissible to renounce the right of fraternal correction, so that the crime may be referred to a superior, without any prior correction. Three opinions exist. The first, the more common opinion, affirms this, and it is taught by Sanch. dec. lib. 6. c. 18. n. 43, Tourn. t. 3. p. 324. n. 5, Pal. tr. 6. dub. 9. n. 4; Suar. d. 8. sect. 6. n. 12; also Valent., Hurt., Diana, and many others, apud Salm. tr. 21. c. 7. n. 87. The reason is that, for the sake of a good end, everyone can renounce their own right, and therefore, many holy men have relinquished their reputation. This is confirmed by D. Th. 2. 2. q. 33. art. 1. ad 1, which states: "It is within the power of each person to suffer a detriment to their reputation, unless this involves harm to others." The second opinion absolutely denies this, and it

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is held by Philiarch. de offic. sac. t. 1. p. 2. l. 4. c. 14; also Rodr., Lorca, Lop., etc., apud Salm. n. 85. The reason is that no one can relinquish a right that they have to their own reputation. The third opinion, which...

[*Latin ed. p. 479*]

It is required, 2ndly, that witnesses testify under oath; otherwise, their testimony is not considered valid, as stated in chapter 51 concerning witnesses, and in the *Tractatus de Testibus*, question 3, paragraph g. There, Panoranus states: "Even to a bishop, as a witness, one should not give credence beyond what is necessary, unless he testifies under oath." It is required, 3rdly, that the witnesses themselves have directly and immediately perceived the matter externally, in the same way that the matter is perceived; that is, they themselves have seen the sunset, heard the blasphemer, etc., as stated in *Lectio Sola*, book 4, chapter concerning witnesses, and in chapter 4, paragraph. Also, in *Soluta Controversia*, question 3, volume 2, Salmeron, chapter 3, paragraphs 48 and 49, with Silv., Panor., Tabernae, and the common opinion. However, it should be noted that even witnesses who testify that they heard something directly, but mediately, that is, through a wall or curtain, and did not see the speaker, are not sufficient for full proof, as stated by Salmeron with Farin and others, paragraphs 50 and 51. This applies to criminal cases, but not to civil cases, except in the case of a will, where it is required that the witnesses not only hear, but also see the testator speaking; as stated in the law, "Si non speciali," chapter concerning wills. Salmeron, ibid. Witnesses who testify about what they heard from others, that is, who have heard a crime being narrated, and one or two witnesses who saw it, not only do not provide valid testimony, but do not even provide half-proof, as stated by Salmeron, chapter 3, paragraph 53, with Mir., Farin, and the common opinion of jurists. When there are more witnesses for the accused and more against, one must rule in favor of the accused, as is fitting, according to St. Thomas, *Summa Theologica*, 2nd part, question 20, article 2, answer 2, even if...

[*Latin ed. p. 480*]

Opposing witnesses are of greater dignity, as stated in Psalm 14 (according to the Vulgate), and by Panormitanus, Mendoza, etc., in volume 261. Furthermore, laypersons are prohibited from testifying against clerics in criminal cases, according to chapter 2, question 12. However, in certain cases, bishops may use lay witnesses of proven virtue to prove the crimes of their subordinates. Conversely, clerics and religious persons may testify against laypersons, although they cannot be compelled to do so by a secular judge, according to chapter 14, question 2. Nevertheless, from the aforementioned text, it is clearly deduced that a cleric cannot testify before a secular judge without the permission of his superior. Whether the testimony of a cleric without the permission of the prelate is valid is more

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likely to be affirmed, as stated by Sanchez in his commentaries, book 6, chapter 5, section 17, number 2, and by the Councils of Trull, Azor, etc., and in Psalm 3, number 28, against those who say that the testimony of a cleric is not valid, except when he is compelled to testify under duress. However, it does not seem to be forbidden for clerics and religious persons to be witnesses in legal documents, since this is nowhere prohibited. See Sanchez, Decreta, volume 2, book 6, chapter 13, number 106, and Psalm, ibid., number 29.

Note: 1. Inept witnesses (enumerated as above by Bus), if they testify, provide some indication, but not a complete or sufficient one for torture; indeed, slaves or those who are vehemently hostile are completely excluded. But if the crime was committed at night or in some other circumstance...

[*Latin ed. p. 481*]

In a secret place, they are then easily admitted. Furthermore, if the witnesses are inept primarily due to partiality, such as enemies, relatives, etc., if one party admits them, the judge cannot reject them. See Salm. cap. 3, n. 31, 263. Note the following: A religious [person] can properly testify in a case concerning his monastery, according to the decree "Statuimus," concerning witnesses. The same is said of a canon in a case concerning his chapter, of a cleric in a case concerning his church, and of a member of a college in a case concerning his college, whenever in the case itself they have no particular interest. However, it must be noted that the testimony of these individuals is not entirely complete; and moreover, it is not to be admitted when other witnesses can be found, as Salm. with others states in cap. 3, n. 45, 264.

"Question: 1st, whether and when is someone obligated to testify? 2nd, to what extent is someone obligated who does not wish to testify, or who has testified falsely?

Answer: 1st, no one is obligated to testify unless either out of charity, when it is necessary to avert a great harm to a neighbor or to the commonwealth, or by order, when a judge or superior, having the authority, legitimately commands it. In the latter case, if you flee or hide yourself before being brought to testify, you do not sin against justice, and therefore you are not obligated to return, as many teach, namely Valentinius and Lessius. The reason is, because you have not yet received the command; but if a right arises..."

[*Latin ed. p. 482*]

Partly, this arises from your testimony; partly, from a precept. Indeed, even if it is the common opinion that he who, having been summoned by a judge, flees or refuses to give testimony through deceit, is held liable, since there is a valid and moral reason for the judge to render a sentence to the detriment of the other; nevertheless, it is not improbable, as Moller and

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Lessius teach, that he is not held liable. The reason is that the summons does not impose an obligation of justice, but only of obedience; therefore, the contumacious person is only disobedient, not unjust. Lessius, *lib. 2*, chapters 17 and 30; and see Bonaventure, *Lamy*, titles 2, chapter 265. It must be noted that a witness is not obligated to confess the truth to a judge who does not legitimately question him; for then he can lawfully answer (even under oath) that he does not know the crime, and he is thereby obligated to reveal it to him. Thus, St. Thomas, *Summa Theologica*, 2-2, question 66, article 1, where he says that in that case, the accused is not obligated to answer, but can lawfully evade the question by appeal or otherwise. And the same common doctrine applies to the witness. See the aforementioned regarding the restriction not purely mental, book 3, number 152, 266.

But the question arises: when does a judge legitimately question? Answer: When there is sufficient proof, for example, one witness of his own sight or hearing, as mentioned above; or if there is notoriety or infamy, or evident indications, or if the accuser offers himself to...

[*Latin ed. p. 483*]

A crime must be proven by multiple witnesses (otherwise, even if several witnesses are present regarding a certain crime, none of them is obligated to reveal the crime); for all of these things are equivalent to *semiplena probatio*, by which intervention, the crime is no longer considered secret, and therefore the judge then has the right to demand that the witness reveal the truth. Thus, commonly, Less. lib. 2. cap. 3. dist. 5. et 6., Nav. and others with Salm. cap. 3. n. 36. et 57., who note n. 62. with Sayr., that in order for a witness to be obligated to answer, it is required that infamy or *semiplena probatio* or indications, as mentioned above, have already been proven and presented to the witness by the judge; unless it is established that the judge is upright and asserts that he is questioning legitimately. 267. Question: From this, it follows: whether, when there is no *semiplena probatio* or infamy or evident indications of the crime, as we have said, if the accuser presents only a single witness, is this witness obligated to reveal the truth? Salm. c. 3. n. 60. et 61. with Soto, Valent., etc., affirm this; because (they say) when there is an accuser conscious of the crime and a single witness, the accused is already considered equivalently infamous. But it is more probable that Ronc. p. 48h. q. 4. r. 2. with Less., Passer., also Silvest., Nav. and Bann. apud Salm. n. 59., according to what has been stated above, deny this. And the same seems clearly to be taught by St. Thomas, 2. 2. qu. 70. qrx. 1., where he says...

[*Latin ed. p. 484*]

Concerning the question of whether one is obligated to answer when questioned, either regarding matters that are manifest or those about

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which one has prior knowledge: Therefore, the judge does not legitimately question when there is no prior knowledge, nor notoriety (for this is what "manifest" signifies), nor prior experience, or other incomplete proof, as stated above... 268. "Response 2nd: Even when legitimately and legally questioned, one is not obligated to testify in the following cases: 1st, if you know the matter from a confession; 2nd, if you have received something under a natural secret (even under a secret merely entrusted to you, as in *Summa Theologica* 2-2, question 20, article 1, and the common opinion with Silvestri and Salmeron, ibid., from number 65, against Soto; because natural law takes precedence over judicial law. See the aforementioned book, number 49. Understand, however, unless a common harm is imminent, or unless you know it from another source; in that case, you are obligated to reveal it, as commonly held by the Doctors with Salmeron, number 20), as a counselor, lawyer, doctor, etc. However, it must not be necessary to avert a great harm to the republic or to a neighbor (as in *Summa Theologica*, *loco citato*, and Salmeron, number 68, with the common opinion); in that case, such a secret may be revealed, even if you had sworn that you would not tell anyone: because such an oath does not obligate, since you are bound by natural law to the contrary. See Layman, chapter 4, number 9. - 3rd, if a notable harm threatens you or those close to you; unless it is a public or private harm..."

[*Latin ed. p. 485*]

1. If the matter pertains to something foreign, as Lugo notes in *De Justitia Disputationes*, book 3, section 10. Therefore, generally, you are not obligated to testify against a blood relative.

2. If you have received the information from individuals not sufficiently worthy of trust; then you may consider yourself to know nothing. (Indeed, Sanchez, *Decreta*, book 1, chapter 3, section 2, number 5, and Navarrus, Soto, Aragona, and others, along with Salmeron, book 3, section 69, state that a witness who has heard something from another is not obligated to reveal it when the judge demands nothing from them other than that they say what they know; because, they say, to know properly is not to believe, but to retain in the mind the truth perceived by sight or another sense: whatever other knowledge pertains to judgment, not to knowledge.)

3. If you understood the fact through wrongdoing, for example, by opening letters, forcing someone to reveal something, etc.; Layman, book 3, treatise 6, chapter 4, section 5; Mollerus, book 5, section 5-6.

4. If another person has probably not sinned in the matter, either through ignorance or because they received something as a hidden compensation for a debt, from which, as if from a theft, an inquiry is made. The reason is that the judge's intention is to inquire about a crime. See Azorinus, part 3, final book, chapter 27; Fillong, Bonaventure, book 10, question 3, page 3; Layman, *loc. cit.*, 269.

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5. Respond: He who, knowing the truth, has testified falsely, and thereby has been an effective cause of damage to another, is obligated to prevent or repair all damages that are caused. Furthermore, he is obligated to make restitution with equal damage. *Lic. Theol. Mor.*, Volume VII, X.

[*Latin ed. p. 486*]

And even with the peril of life, if the accused is endangered by it, and it is believed that something will be accomplished by retracting [the testimony]. Thus, generally. The reason is because, in equal damage, the reason of innocence ought to be preferred. *V. dub. seq. art. 1.* "I said 1st, 'knowing': because if, through ignorance, inadvertence, or excusable forgetfulness, a false testimony is given, and although he is held to prevent it if he can, he is not nevertheless held to restitution, even if the accused is condemned." The reason is because he is neither bound by the received thing, nor by the offense. "I said 2nd, 'efficacious cause': because if the false testimony did not effect anything on the part of the thing, for example, because through the false testimonies of others, the entire cause of damage was already decided, so that the judge was not moved by this testimony, he will be held to nothing." *Less. lib. 2. c. 30. et Laym. lib. 3. t. 5. cap. 8. et alii.* "270. The witness sins 1st, if he affirms what he does not know; 2nd, if he reveals a truth which he ought to conceal; 3rd, if he hides himself, so that he is not questioned, in the case where he is bound to testify; 4th, if he does not obey the judge who justly questions him; 5th, if he receives a price for saying the truth." "But it is doubted 1st, whether the witness sins against justice, and is held to restitution, who hides himself so that he is not summoned by the judge. Some affirm this, *Sot. de just. lib. 5. q. 7. art. 1. et alii apud Lugo d. 39. n. 4.* But most commonly, and more truly, they deny it, *Lugo n. 5., Less. l. 2.*"

[*Latin ed. p. 487*]

Chapter 3, paragraph 58. With Salmeron, Pena, and Bonaventure, Decree 1, title 10, question 3, paragraph 3, number 12; with Navarret, Fillol, Banniza, Rebellino, Sayr, and others. The reason is that, although one may gravely sin against the charity due to one's neighbor, he does not nevertheless sin against justice, since no one is bound to obey the command of a superior before it has been imposed upon him.

Objection 2: Is the witness bound to restitution who flees after being summoned?

It is affirmed by Soto in the aforementioned passage, by Sanchez in *Consilia*, book 6, chapter 5, number 4; also by Navarret, Azorín, Fillol, Salmeron, and Regueiro in Bonaventure, in the aforementioned passage, number 13. Because, by the very fact that the witness is summoned, he is bound by justice to give testimony; just as if a judge commands someone to produce a document relevant to the case, that person is bound by justice

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to present it; otherwise, he must make restitution for the damage to the opposing party.

However, Lugo in the aforementioned passage, number 5, and Molinos, *Disputationes*, 83, volume 2, on the subject of witnesses, commonly and more probably deny this. Bonaventure and Lessius, in the aforementioned passages, number 13 and number 59, with Sylvester, volume 2, on witnesses, number 8, seem to hold this view.

The reason is that that summons does not impose an obligation of justice, but only an obligation of obedience. The analogy drawn to the presentation of a document does not hold; for Lessius rightly responds that that document must undoubtedly be presented by justice, since it is an external thing concerning which one can rightly dispose, just as with other goods of citizens, when it is necessary to protect their rights; this is not the case with the obligation to testify.

[*Latin ed. p. 488*]

3. It is doubted whether a witness who, being lawfully questioned by a judge, conceals the truth, is bound to make restitution for the damage. It is certain that he is bound to do so, if he positively gives false testimony concerning a fact, for example, if he states that he knows that Peter owns a house, when in fact it belongs to Paul; see Lugo, book 3, title 39, paragraph 4, number 4. Holzmüller also holds the same opinion in volume 1, page 503, paragraph 710, concerning a witness who was present at the granting of a loan and, when subsequently questioned, denies it; because in this case, he already inflicts a damaging injury upon another. But what if the witness conceals the truth, maintaining a negative stance regarding the fact, namely, if he answers that he does not know something when he truly does know it? Salmasius also affirms that he is bound to make restitution, in *Tractatus*, book 27, chapter 1, paragraph 20, and the same should be said by all the aforementioned authors cited in support of the first opinion of the preceding question, for the same reason as stated above, because witnesses, under the command of the judge, are bound by justice to reveal the truth; and just as the judge sins against justice if he does not render a judgment, so too, the witnesses sin who do not manifest the truth. However, Moller, book 83, section "De Teste," and Lugo, in the aforementioned passage, number 5, along with Rainoldi and others, contradict this, and Lessius, in the same Lugo, considers it to be reasonably probable. The reason is that a witness is not bound to testify to the truth unless either by the command of the judge or by reason of the oath given; therefore, by concealing the truth, he does not sin against justice, but only against obedience, or even against religion. Disparity.

[*Latin ed. p. 489*]

The judge, however, is distinct from the witness: for the judge, having

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entered into a quasi-contract with the Republic by reason of the office he has assumed, is bound by justice to render a just judgment; whereas the witness is not bound by justice, but only by obedience, and therefore he sins only against obedience when he fails to manifest the truth. To this opinion, Bonaventure also adheres, in the aforementioned place, number 14. Hence, Ciera, in *de cas. reserv.*, book 6, number 62, states that a witness who withholds the truth concerning the month of January does not incur a reserved case in the oath of those who swear falsely with damage to a third party; because the reservation is understood to apply to him who swears with a positive falsehood, and not with a negative one. However, Bonaventure states in the same work that if a witness has sworn to speak the truth, he is then bound by justice to say it, because from a promissory oath arises an obligation of justice. But Lessius, number 60, is more probable; for the witness, by swearing to speak the truth, does not intend to obligate himself by justice, but only by the power of religion to manifest it. But you might say: he who, by fraud or falsehood, prevents someone from obtaining a just good, is certainly bound to make restitution for the damage caused, as we have stated in book 3, number 58. Therefore, likewise, the witness is bound to restore the damage he has caused to his neighbor by saying that he does not know something which he truly knows, thus preventing him by such a falsehood from obtaining his rightful due. But let us consider this further.

[*Latin ed. p. 490*]

When lying is the cause of positive, or active, harm; otherwise, if it is only the cause of negative harm. However, a witness who says that he does not know the truth which he knows, is only the cause of negative harm, since he does not add any positive impediment to prevent another from obtaining his right, but only removes an impediment that hinders another, namely, the lack of proof, to which the witness may indeed be bound to remove, either by obedience and religion, as we have said, or even sometimes by charity, but not by justice, unless perhaps a special agreement has been entered into with one of the parties regarding the manifestation of the truth.

271. For the completion of this point, question 1: Whether a deposition made only in writing and not orally is sufficient. Some affirm this, and Psalm 8, no. 72, considers it probable, and say that prelates and visitors can use this method well to avoid clamor; and this is held by Rodr. et al. there, at least if the cause is of slight importance. However, the common opinion and the more probable opinion holds that this is not sufficient in a criminal case, as is stated in chapter 3, question 6, and in "A nobis. Qui matr. acc. etc.," where it is written: "No importance is attached to a written statement when giving a judgment; although this may be valid for proving infamy outside of court, as Felin and Far. state in Salm. chapter 3, no. 74."

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Therefore, the deposition must be made orally and with some sacred object, such as a cross or the Gospel.

[*Latin ed. p. 491*]

However, it suffices for priests to swear by touching their breast. Psalm 76. Moreover, the judge himself ought to examine the witnesses, as the common Doctors teach, along with Covarruvias and Salmerón, chapter 3, number 76. Nevertheless, the judge may entrust the examination to another worthy person, as Salmerón states there, that it is the practice of all tribunals, if the judge is impeded, or if the witnesses, because of old age or poverty, cannot approach the judge, as is evident from the passage: "If anyone concerning witnesses." Furthermore, in criminal cases, the judge himself usually accepts the examination, according to the authority on witnesses. All of this. The witness must be questioned about his age, name, surname, and condition; then, he must be questioned point by point about the fact and its circumstances, namely, about the place, time, and other persons present at the fact; also, about the reason for his knowledge, especially in a criminal case. See Salmerón, number 78. Moreover, the words of the witness must be written down, as he utters them. Also, care must be taken that the witness does not know the testimony given by another witness. Salmerón, number 80. If a witness is found to have said something false in some matters, he is not to be believed in other matters. Salmerón, number 82. Furthermore, the deposition must be read again before the witness, and he must ratify it, and it must be noted in the ratification what the witness adds or changes. And at the end, the secretary must write: "All of which he affirmed to be most true."

[*Latin ed. p. 492*]

"He swore an oath concerning that which he stated; and when all that he had deposed had been read to him, word for word, he ratified it and signed it with his own hand. And at the end of each deposition, the witness, the judge, the witness, and the secretary must subscribe. And if the witness is unable to write, he shall make the sign of the cross, and another shall subscribe for him, and the secretary shall note this down there. Thus, once the deposition has been ratified, no further account need be taken of anything that the witness may say otherwise afterwards, even at the point of death, as Bald., Felin., and Men. V. Salm. state in numbers 83 and 92. Furthermore, after the citation of the matter, whether orally or actually through the imprisonment of the matter, or by edict if the defendant has fled; and with the dispute thus commenced (which is certainly necessary for the essence of the process), the witnesses must be summoned again under oath, except in the case where proceedings are taken against the defendant in his absence, as a contumacious person, or if the witnesses who had deposed are deceased, or if the judge proceeds ex officio and not

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at the request of a party. Thus, generally, the Doctors state this in Salm. from number 85; although Rodr., Suar., Lez., etc., in that place, number 88, hold that in the cases of religious persons, this ratification is not required. However, in this ratification, more credence should be given to the scribe who wrote the deposition than to the witness asserting that something else was deposed than what is written: thus, Cov., Bald., etc., state in Salm. number 92."

[*Latin ed. p. 493*]

SEVENTH DOUBT. CONCERNING THE ACCUSED. ARTICLE FIRST. WHETHER AND HOW THE ACCUSED IS OBLIGATED TO CONFESS THE TRUTH.

272. What can the accused answer who is not legitimately interrogated?

273. When is the accused not obligated to confess the crime?

274. Is the accused obligated to confess the crime under the threat of a severe punishment?

275. Does the accused sin gravely who, to avoid torture, imposes a false crime upon himself?

276. When is the accused obligated to retract his confession?

277. May the accused, in his own defense, reveal hidden crimes of witnesses or the accuser? And does he sin gravely if he imputes false crimes to them?

278. Is the accused obligated to reveal accomplices?

272. *R ESP. 1.°* If he is not interrogated legitimately, he is not obligated to confess his crime, but he may deceive the judge, either by ambiguous words, or even by denying, with some qualification and in a good sense, so that falsehood may be absent. The reason is, because then the judge has no right to interrogate, nor to impose an obligation upon the accused. Thus, Less. t. 6. l. 3. c. 5. and Bon. d. 10. q. 3. p. 2. (Thus, Caj., Azor., Sanch., Ronc. and others, according to the words in book 3, number 154, from D. Th. 2. 2. q. 69. art. 1., which art. 2. says: "Another thing is...")

[*Latin ed. p. 494*]

To conceal the truth, or to utter falsehoods. The first of these is permitted in certain cases: for no one is obligated to confess every truth, but only that which the judge can legitimately demand of him, for example, when there has been a partially completed proof. "Therefore, it is resolved: 273. 1st. The accused is not obligated to confess his crime. 1st. If the judge is not legitimate; 2nd. If he himself initiates the legal process, without a prior accusation, at least virtual; 3rd. If there has not preceded a partially completed proof, nor do infamy or manifest signs of the crime exist. The reason is, because in these cases, the judge does not legitimately interrogate, Az., Less., Fill., Laym., Bon. ll. cc., Lugo d. 40. n. 1. 2nd. Nor is he obligated,

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if he doubts whether the judge will legitimately interrogate: for he is not obligated to obey when it causes him grave harm; unless it is certain that a superior can command it. Thus Less., Fill., Laym. l. c., Sanch. l. 6. cons. c. 3. d. 31., Salas, Lugo, etc. against Silv., Bon. and others. (Thus, absolutely, Salm. de officio c. 7. n. 3. with Sot., Sanch. and Nav., and Sanch. cons. lib. 6. c. 3. dub. 31. n. 2. with Sot., Cord., Caj., Nav., Palac. etc., against Palud., Silv. and S. Anton. The reason is, because the accused possesses his life and reputation; therefore, in doubt, he has the right to preserve them, until it is certain that the interrogation is legitimate.)"

[*Latin ed. p. 495*]

3. The judge is obligated to inform the accused of the state of the case and of the evidence, and how the crime is being proven, so that the accused may know whether he is being legitimately questioned; for otherwise, he will not be obligated to answer, lest he deprive himself or others of honor or of goods which he possesses in good faith. *Cajus, Naval, cap. 25, no. 43; Lugo, d. 40, no. 1.* (Similarly, Soto, Tollet, Lessius, etc., with Salmeron, ibid., no. 3, generally agree.)

4. If the judge legitimately questions the accused, but only based on a false presumption of guilt, for example, whether he left a certain house, under strict guard, the accused (as is the case with a witness) may deny it, even if he knows that it has been sufficiently proven that he left, provided that he did so not in fact committing a crime, but for another reason; because if the judge knew the truth, he would not be able to question him. Thus, *Summa Theologica, q. 66, art. 1; Soto, Facundia, p. 8, c. 34; Diana, p. 3, t. 5, miscellanea, r. 65; Lugo, d. 40, no. 4.* (The same should be said if someone killed in just self-defense; then he may answer the questioning judge that he did not kill, that is, with guilt; thus Soto, Salmeron, c. 6, no. 19.)

274.

Response 2. Although the more common and truer opinion is that of *Summa Theologica, 2-2, q. 69*, that if the accused is legitimately questioned by a judge, he is obligated in conscience to openly speak the truth, it is also probable, as taught by Sylvander, that neither Sa nor Lessius holds that he is, at least under a mortal penalty, obligated to...

[*Latin ed. p. 496*]

In cases of capital or very grave crimes, if there is hope of escape and no serious damage to the commonwealth is feared, Tann. q. 4. d. 5., Lugo d. 40. n. 15., states that this opinion is highly probable and safe in practice. The reason is that human law generally does not impose obligations with such great peril, for example, of death; furthermore, it seems inhuman to require one who cannot escape to provide weapons against himself with which he might be killed, or to undergo a very severe punishment, for

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example, perpetual imprisonment; and finally, it does not seem possible to demand such a heroic act. Bon. in VIII. pr. d. 10. q. 3. p. 3. n. 17. "This question is of great importance: whether the accused is obligated to confess the crime to a judge who legitimately interrogates him, under the fear of a great punishment. The first opinion affirms this, following St. Thomas [2. 2. q. 69. art. 1. ad 2.], Sotus, Lessius, Sanchez, Tollet, Silvaticus, and Salmeron, de offic. c. 7. n. 9., who say that this opinion is more probable and should be followed in practice, although they call the opposite opinion probable both intrinsically and extrinsically. The reason is that the judge has the right to demand that the accused reveal the crime to him when he legitimately interrogates him; therefore, the accused sins against justice if he does not obey in this serious matter. However, the second opinion, which I also consider sufficiently probable, even intrinsically (although I believe the first opinion to be more probable), is held by Busenbaum and Sanchez, Suarez, Filliu, Elburg, Rodriguez, Villanova, Henry, Peyrin, Fagius, etc., apud..."

[*Latin ed. p. 497*]

In Psalm 6, and as Lugo seems to consider probable in *De Justitia*, book 40, number 14, at the end, this opinion holds that the accused is not obligated to reveal his crime in the case where he would be condemned to death or to the galleys, to perpetual imprisonment, or to the loss of all his possessions or of his entire reputation and honor. The reason is that it appears that this harsh law does not apply, as it seems humanly impossible to compel someone to condemn himself to the most grievous punishment by confessing his crime; unless a common harm is imminent from the concealment of the crime, such as heresy, treason, etc.; in such a case, the accused is obligated to betray himself, or at least his accomplices, as much as is necessary to avert the common harm, even if death threatens him from the revelation of his accomplices, from whom he might be acquitted in judgment. However, in the case where such harm is not feared, when the law obliging him to confess the crime probably does not exist, it is probable that the judge does not have the right to demand the truth in such a case, nor does the accused have the obligation to manifest it; and therefore, the accused, by concealing the crime through ambiguous statements, does not sin against justice, according to what is said in L 3, number 156. It does not object to say that the accused is then obligated to suffer that harm for the common good: for if this reason were valid, the accused, condemned to punishment, would not even be able to flee from prison; in both cases, the reason of the common good prevails; and

[*Latin ed. p. 498*]

Nevertheless, the accused may lawfully flee, as they themselves admit, Salm. c. 7, n. 57, in accordance with the common opinion from D. Th. 2. 2,

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q. 69, art. 4, ad 1., where it is said: "He is not bound (the accused) to do that from which death follows, which is to remain in a place from which he is led to death." And this, even if the judge commands that he not flee; as Lugo certainly holds, in the aforementioned work. Furthermore, all agree, as is fitting, that if the accused is in good faith and believes that it will be difficult to induce him to confess the crime when questioned by the judge, the confessor must, in his good faith, absolve him, as Sanch. dec. lib. 3, cap. 7, n. 8, and Salm. c. 6, n. 24, etc., state. I said 1st, in the section on capital crimes: "Because it is different in cases where the matter concerns ecclesiastical punishment, which is medicinal." I said 2nd, if there is hope of escape: "Because without it, the reason for concealing the truth ceases." Therefore, it follows: 1st, that, according to what was said in response to the 2nd point, it is not always necessary for the confessor to urge the accused to confess the crime. Lugo, dist. 40, n. 20. 2nd, after a long silence, the accused is not bound to confess the crime that he unjustly denied before; because, once the judgment is concluded, the obligation of the accused ends, Laym. in loco citato. (The same is said of a witness. See lib. 3, n. 155.)

[*Latin ed. p. 499*]

Indeed, it is probable that one is not bound to adhere to a judgment concerning this matter, even if it is still within the power of the judge, unless he is questioned again. Lugo, d. 40, n. 17. (Thus also Sanch., loc. cit., n. 8, and Salm., n. 21, etc., against Nav., Bann., etc. The reason is that legal justice does not obligate except when the judge questions: unless the judge prescribes a time for answering, for example, if he commands that the accused tell the truth within a month, and that month still lasts.) However, despite these considerations, Soto teaches more probably in book 5, on justice, question 6, article 12, and Nav., Sum., chapter 25, n. 36, and also Sayr. and Angl., apud Sanch., n. 7, who admit the common opinion. The reason is that as long as the judgment is pending, the precept of the judge is still considered to endure, so that a just judgment may be rendered.

Response 3: If someone, to avoid grievous torments, lies and imposes a false crime upon himself by which he would be condemned to death, he does not seem to commit a mortal sin. Thus, Ang., Silv., Less., book 2, chapter 11, d. 7, and Tann., de just., d. 4, q. 4, dub. 5, teach against Nav. and others. The reason is that he does not lie perniciously, since he is not bound to preserve his life by such grievous torments. See Lugo, loc. cit.

Query: Here, does one sin grievously by confessing a false crime to avoid grievous torments? The first opinion denies this.

[*Latin ed. p. 500*]

The opinion of Bus., Lessius, book 2, chapter 11, paragraph 4, is held with Anglerius, Silvestrius, Tolletus, and Soto; and Lugo considers it probable, book 14, paragraph 174. The reason is that no one is obligated to preserve

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life when enduring such torment that appears more grievous than death itself, according to what is stated in book 5, paragraph 372. The second opinion, which is more probable, affirms this, and it is held by Mollerus, distinction 37, paragraph 18, and Lugo in the aforementioned place, with Navarrus and Covarrubias. The reason is that, although no one is obligated to preserve life by employing a means that is itself more grievous than death, no one can positively cooperate in his own unjust death, which is intrinsically evil; for a man is not the master of his own life. Therefore, Mollerus infers in paragraphs 16 and 18, contrary to Bus., as will be shown later, that if the cause [of the situation] is still such that death can be prevented by retraction, the accused must retract; because that false confession continues to contribute to his unjust death, and therefore he is obligated to remove that cause; just as he who culpably sets fire to another's house is obligated, even at his own expense, to extinguish it. However, Lugo notes in paragraph 187, with Mollerus, that even if the accused, from the beginning, committed sin by confessing a false crime with the defamation of another, he is not obligated to retract afterward to repair the other's defamation, by exposing himself again to those very grievous torments; because no one is obligated to restore reputation when doing so would cause him a far greater harm.

[*Latin ed. p. 501*]

276. 1.º Is non tenetur postea crimen revocare, quamvis antea perjurio confirmasset, si prudenter metuit ne ad tormenta revocetur: quia etsi pejeratione graviter peccavit, hoc iam transit et non retractando nemini facit injuriam; ideoque sufficit coram Deo pœnitere. *V. Less., Tann. loc. cit. et q. 5. d. 4.*

2.º Si ex illa falsi criminis confessione grave damnum aliis sequitur, v. gr. bonum reip. aut fama religionis vel familiæ notabiliter læderetur aut aliqui ideo in hæresim lapsuri essent, quævis potius tormenta perferenda essent. *Tann. loc. cit. et quæst. 5. d. 4.*

3.º Si reus tormentis coactus denunciavit alium innocentem, tenetur sub mortali ante suam condemnationem et, si tum non facit, etiam damnationis tempore revocare; ad quod etiam a confessario est obligandus. *Ita ex communi Tol. lib. 5. cap. 6. n. 7., Less. cap. ult. dist. 15., Tann. dist. 4. q. 5. d. 4. n. 103.* Ubi subjungit: 1.º Si quis tamen sequatur ipsaque praxi servari advertat eam sententiam quæ negat per revocationem in extremo vitæ factam tolli vel infirmari denunciationem ante factam, ut docent Delrio lib. 5. sect. 5., Valent. d. 6. q. 13. p. 4., is consequenter existimare poterit denunciantem in eo mortis articulo, saltem cum suo.

[*Latin ed. p. 502*]

"It is not obligatory, and is burdensome, to demand retraction from one who is under mortal sin, because it is futile. Thus, Tann, in the cited passage.

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Although he rightly believes this, the foundation of this opinion is less probable."

"4th. Tann, in number 105, also warns that the confessor must be careful not to repeatedly and annoyingly urge the condemned person to retract the denunciation or the accusation, nor should he reveal a retraction that has been made imprudently and with scandal."

"277. Question: Here, can the accused reveal hidden crimes of witnesses or the accuser in his defense? And does he sin gravely if he imputes false crimes to them? First of all, the proposition 44, condemned by Innocent XI, must be noted, which stated: 'It is probable that one does not sin mortally if he imputes a false crime to another in order to defend his own justice and honor.' And if this is not probable, it will scarcely be optimistically probable in theology."

"Answer: 1st. To oppose a false crime to a witness or accuser in order to defend one's own cause is always illicit and constitutes a grave sin. Thus, according to the commentary on the Summa Theologica, 2-2, question 69, article 2; Sanch, consilia, book 6, chapter 5, doubt 20, number 4; Sotus, Lessius, and Salm, on the office, chapter 7, number 27. And this, even if the accused were truly innocent and unjustly condemned to death."

"Salm gives the reason in the cited passage: because it is never permissible to..."

[*Latin ed. p. 503*]

To defend oneself, even with serious harm to the innocent neighbor. But this reasoning, taken in such a general way, is by no means suitable; for, according to the law of charity, since life is a good of a higher order than temporal goods, one may defend one's life, even with the loss of another's goods or reputation. And if, in addition to this, the accused employs falsehood, it is indeed a sin, but not a mortal one; because, by reason of the damage, the neighbor is obliged to suffer the damage to his reputation in order to preserve the life of the innocent in extreme necessity. The reason that I believe is more valid in this case is that an unjust injury to another's reputation is either not the only means of defending one's life, or it is easily subject to the danger of illusion; and that to tell grave lies in a trial is contrary to the common good, since it is to pervert the entire order of justice, and therefore everyone ought to prefer it to a private good, even to one's own life.

Resp. 2. It is permissible for the accused to oppose a true, but hidden, crime of the witness or accuser, as Sanchez, loc. cit., n. 1; Roncaglia, c. 2, q. 4; Salm, n. 30; Viva in d. prop. 4, n. 12; and Milantius, ex. 24, V. dict. l. 3, n. 96g. Provided that this is absolutely necessary for the defense of one's innocence; also, provided that the accused would otherwise suffer a

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serious, not a minor, loss, even if a greater loss ensues.

[*Latin ed. p. 504*]

"Whether he be accuser or witness, as Sanch. states in the aforementioned passage, number 4. But what if the accused has committed a crime, but secretly, so that it cannot in any way be proven? Can the accuser then say that he has lied, or can the accused oppose the accusation by claiming that the crime is hidden? Corel. affirms in the exposition of proposition 44, condemned by Innocent XI, as mentioned above, and it is likely that Salm. rightly believes this in chapter 6, number 35, and Ronc. in chapter 2, question 6: because he who accuses the accused of a completely hidden crime is considered, in law, as if he were accusing him of a false crime and bringing a calumny, as the Glossa says in chapter "Cum dilectus, de calumnia," with these words: "If the accuser does not prove what he intends, he is presumed to be a calumniator." And for the same reason, Sanch. states in his "Consilia," book 6, chapter 5, doubt 20, number 1, and Salm. in chapter 7, number 30, that in the case where the crime of the accused is hidden and cannot be fully proven, the witness may reveal the hidden crime for his own defense; but, they add, only if the witness testifies spontaneously and is not compelled; but Mil. and Viva admit this in proposition 44 of Innocent XI, number 12, and Lugo more explicitly in number 23 of his work, even if the witness is compelled to testify; for, according to the common opinion of the Doctors of the Church, as transmitted by D. Th. 2.2. q. 73. a. 2, and reported in book 3, number 969 (which I ask you to read), no one is obligated to preserve the reputation of his neighbor if it causes him grave harm."

[*Latin ed. p. 505*]

278. "One inquires whether the accused is obligated to reveal accomplices."

"Response: 1. o If they are entirely hidden and cannot be convicted by other evidence or testimonies, he is not able to, nor is he obligated to; however, if, compelled by torture, he reveals them, he ordinarily does not sin. Less. in loco citato, and Laym. book 3, part 5, chapter 5.

"Response: 2. o If the crime is an excepted one, he is obligated to reveal them even without being asked; therefore, according to Navarrus, if he reveals them, he will not be absolved.

"ARTICLE SECOND. WHAT IS PERMISSIBLE TO THE ACCUSED REGARDING ESCAPING PUNISHMENT.

279. Is it permissible for an unjustly condemned accused to repel force by force or to actively resist?

280. Can an accused who has truly committed the crime flee from prison?

281. Is a condemned man obligated to flee if he can?

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282. Is it permissible for the accused to deceive the guards in order to escape and to break the prison? And is he then obligated to pay for the damage caused by the broken prison?

283. Is it permissible for others to help the accused to escape or to break the prison?

284. Is a condemned man, in order to die of hunger, obligated to accept offered food?

285. When is it permissible for the accused to appeal?

279. "Response: When the sentence is materially unjust, although pronounced according to the alleged..."

[*Latin ed. p. 506*]

And it is proven that, although it does not obligate in conscience, the accused cannot positively resist the judge; first, because in such a case, the judge has the right to enforce the sentence, and is bound to do so. Thus, generally, Lessius, Sanchez against Victorius, Bonaventure, Lugo, book 4, number 38. I said "positively," because even if the accused is truly guilty, it is permissible for him to flee, both before and after the sentence (regarding death or a punishment equivalent to death, for example, perpetual imprisonment). The reason is that everyone has such a great right to the preservation of his life that no human power can obligate him not to preserve it, if a reasonable hope is shown: unless, of course, the common good requires otherwise. Lessius, book 2, chapter 31, section 5. "But it must be more clearly distinguished and said: 1. If the accused is unjustly condemned, not only according to the truth of the matter, but also according to the alleged and proven facts, he cannot, by force, repel the injustice by killing, wounding, etc. For proposition 18, promulgated by Alexander VII, which stated: 'It is permissible to kill a false accuser, false witnesses, and even a judge from whom a certain and imminent danger to the sentence arises, if no other way can be found to avoid the innocent from harm,' has been prohibited. The reason for this is that, since it is easy for those who are unjustly condemned to persuade themselves that they are so, if it were permitted to them to kill, more murders would occur with common harm: therefore..."

[*Latin ed. p. 507*]

Because of the ease with which one can be deceived in matters of danger, the aforementioned proposition was rightly condemned. However, it is permissible for the accused, and indeed, it may be positively right, to flee, or even to resist, for example, by throwing things at their captors or even by using weapons to escape from their hands. Thus, St. Thomas [Aquinas] teaches in 2-2, question 69, article 4; Roncaglia in de VIII. præc., chapter 2, question 7; and Salm in chapter 7, number 51: provided (as these authors point out) that this does not result in public scandal or disturbance.

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Secondly, conversely, if the sentence is entirely just, because the accused has truly committed a crime and it has been sufficiently proven, then it is not permissible for him to actively resist, as St. Thomas teaches in the aforementioned place, as well as Busenbaum here, Salm in number 50, and others generally. The reason is that, when the sentence is just, it obliges the accused to obey, as St. Thomas says in 28o. But the question here is: can an accused person who has truly committed a crime flee from prison? The answer is yes, firstly, if the accused has not yet been sentenced to punishment: because no one is obligated to undergo punishment before a sentence, as Roncaglia teaches in chapter 2, question 8, and Salm in chapter 7, number 53, with Sayr and Salon. The answer is also yes, secondly, if someone has been sentenced to death or to another severe punishment, as will be explained below, provided that he has not been assigned to prison to undergo the punishment, but rather to be held in custody, as St. Thomas teaches in 2-2, question 69, article 4, ad 2, as well as Cajetan, Soto, Toldeo, Sahagun, and Busenbaum.

[*Latin ed. p. 508*]

Here, Roncatius, in the aforementioned place, and Salm, number 57, along with others, state the reason: because the sentence does not condemn the guilty to flee, but only to not resist the magistrates when they execute the sentence. The same is said regarding the death penalty, as is stated by Salm, Roncatius in the aforementioned place, concerning the penalty of mutilation and flogging. And Lugo, in book 40, section 4, and Roncatius state the same regarding the penalty of rowing in a trireme. However, if imprisonment has already been assigned by the sentence as a punishment, even perpetually, then it must be denied that it is permissible for the guilty to flee from prison, because, in the just execution of the sentence, the guilty person is certainly obligated to obey. Thus, Navarrus, Silvanus, Cajetan, etc., along with Salm, chapter 6, number 54, and Roncatius in the aforementioned place, along with their commentaries, contradict Busenbaum. However, some make an exception if the necessary things for sustenance are not provided to him in prison, as Salm states in the same place, or if the prison is excessively gloomy; because it seems to exceed the strength of human beings to obligate someone to not free himself when he can do so without force and resistance, from a very harsh punishment. Thus, Bonaventure, along with Palearius. This confirms what Saint Thomas states in *Summa Theologica*, 2-2, question 69, article 4, ad 2: that one who is condemned to die of hunger may licitly take food. By the same reasoning, Lugo, Sanchinez, and Navarrus, along with Salm, chapter 7, number 60, at the end (contrary to Sayr), excuse those condemned to row in triremes if they flee from prison, and even from the triremes

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themselves, as Sanchinez, in decree 1, 6, seems to hold as more probable.

[*Latin ed. p. 509*]

Chapter 8, paragraph 16. And Lugo, Less, Bann, Led, Card, Nav, with Salm and Ronc, in the aforementioned work, against Vasq and others. Also, it is probable that Salm and Ronc, in the same place, with Nav, Salon, Lop, etc., excuse the debtor condemned to prison until he pays, if he flees, hoping to effect a settlement which he could not accomplish while in prison.

281. Question: Here, question 2: Whether the accused, justly condemned to death, is obliged to flee from prison if he can. The first opinion affirms; because otherwise, it seems to be suicide. Thus, Imola and Felin, in Salm, chapter 7, paragraph 61. And they assert that this can be deduced from St. Thomas, who in the Second Part, question 69, article 4, says that the one justly condemned to death is not obliged to do that which would lead to death, namely, to remain in the place from which he is led to death. Although Salm calls this opinion probable, in chapter 7, paragraph 63, I nevertheless believe the second opinion to be more true and to be held, which teaches that neither the one detained in prison for a capital crime, nor the one justly condemned to death, is obliged to flee, as say Silv, Sot, Sa, and many others, with Salm, chapter 7, paragraph 63. The reason is that, although the accused cannot perform an act immediately leading to death, such as mutilating his own limbs, jumping from the gallows, or drinking poison, he is nevertheless permitted acts that are mediate, such as climbing the ladder of the gallows, extending his neck to the...

[*Latin ed. p. 510*]

The rack and thus remain in prison; especially if it has a just end, namely, to satisfy for the crime, and so that his punishment may serve as an example to others; and thus it is to be understood according to St. Thomas, as mentioned above, who does not say that the accused is to be held back from fleeing, but only that he is not to be held back from remaining in prison when he can flee. But the doctrines which have been presented thus far speak in the case where the sentence was entirely just or unjust. However, the doubt raised by Salm. is not sufficiently clarified, namely, what is to be said if the sentence was only materially just, that is, just according to what is alleged and proven, but not according to truth, because in truth, an innocent person would be condemned; whether in that case, to avoid punishment, he could not only flee from prison, but also actively resist. Bus. denies it, and Salm. seem to agree in n. 51, saying that the accused is bound to obey a just sentence according to what has been proven. However, Ronc. loc. cii. cap. 2. q. 7. and Lugo d. 40. n. 29. quite probably say that in this case, the accused could rightly defend himself actively; because presumption must give way to truth, and innocence itself then grants the right to defense: provided that it does not give rise to public scandal and disturbance, as we

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said with St. Thomas and others above. 1.º Regularly, it is permissible for the accused to flee, even if the jailer of the prison would suffer a serious loss from it.

[*Latin ed. p. 511*]

He may [remain], at least unless he has sworn to do so; because he is exercising his right and is doing no injury to anyone. *Fill., l. 40, c. 4, n. 274; Azor.; Less., d. 5, n. 31.* Unless, however, charity suggests otherwise, considering the advantage of the guardian. *V. Bon., d. 10, q. 3, p. 2, n. 13.*

2. Moreover, it is permissible to flee in order not to be captured, or even to shake off one who is seizing him, but not to inflict violence upon him, by wounding, striking, etc.; *ib.;* and *Regin., lib. 24, n. 4.*

3. It is also permissible, at least in foro conscientiæ [in the court of conscience], to deceive the guards (by force and injury), for example, by providing them with food and drink, in order to lull them to sleep, or by trying to ensure that they are absent; also, to break chains and escape from prisons; because, when the end is licit, the means are also licit. And even if other captives were to escape at the same time through a broken wall, he will not be held liable for damages; because the damage is only his by accident, since he is exercising his right. Nor does it matter that certain laws and magistrates severely punish such breaches; for this is because they either follow a contrary opinion, or from presumption, that force has been used against the guards, or because for the good of the commonwealth, that penalty has been established. *Fill., l. c.; Tann., d. 4, q. 4, dub. 5, ex aliis multis. V. Lug., d. 40, sect. 4.*

It is more probable that this [i.e., that it is permissible to break out of prisons] is held by Bus., Caj.

[*Latin ed. p. 512*]

Soto, Vallius, Navarrus, Tolletus, Lessius, Lugunius, Sarius, et multi alii, cum Salmeron, cap. 7, n. 67, et Roncaglia, cap. 2, quaest. 8, respons. 3, contra Covarrubias, Silvestrini, Tabernarius, etc. Atque affirmant Lessius, Cajetanus, Soto, cum Salmeron, n. 78, si reus tenetur tum reficere damnum illatum in carcerem, per frangendas portas vel parietes, etc. Sed probabile est contrarium, cum Salmeron, n. 77, Bannius, Vallius, Sayrus. Quia illud damnum evenit per accidens; alioquin, qui habet jus ad vitam suam tuendam, habet etiam jus ad damnum alteri inferendum in bonis, si ad defensionem vitae opus sit illud damnum inferre. Consentient etiam cum Busenbaum, Salmeron, cap. 7, n. 75, et Roncaglia, cap. 2, quaest. 8, resp. 5, in dicendo quod licet reo decipere custodem, ut possit fugere; modo tamen (admittunt) tales actus et verba adhibeat ut possit custos fraudem agnoscere. Aliter, si custos non potest ad-vertere; quia tunc nullo modo dici potest quod custos, sciens et volens, damnum ex fuga illi obveniens, patiatur. Sic Salmeron, cuius auctoritati obsequium servo: sed non valeo intelligere cur

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reo cui licitum est fugere, non liceat etiam artes adhibere ad fugiendum (dummodo mendacia non adhibeat), etiamsi illas custos non possit advertere et ex fuga damnum ei sit obventurum, cum reus tunc utatur jure suo et damnum custodi per accidens eveniat. Favet...

[*Latin ed. p. 513*]

To me, the doctrine held by Bus and many others, as found in Salm. cap. 7, n. 67, seems correct, namely, that a condemned man can rightly break his bonds in order to flee, even if this escape causes harm to the guards, as Cajetan expressly teaches in Salm. n. 77. The reason is that, at that time, the accused is acting for a lawful purpose. However, Roncaglia, in the aforementioned work, and Salm. n. 64, along with Tamburrini, Angeli, etc., assert that it is certainly permissible for a prisoner to corrupt a jailer with money; because, they say, the accused has a right to preserve his life, and no law forbids this. But I cannot agree with this doctrine, for although everyone has a right to life, no one can compel another to perform an intrinsically evil action; and the action of the jailer, if he opens the door for the accused to escape, is certainly an intrinsically evil action, since he is sinning against his duty; therefore, I do not know how he can be positively induced to do so.

283. 4.º To those who are not ministers of justice, it is permissible not only to help the accused to escape by counsel, but also, by providing instruments, e.g., ropes, files, etc.; because it is permissible to suggest a certain end to another, and to propose means to achieve that same end. Lessius, in the aforementioned work, part 6, n. 40, and Tannini, in the aforementioned work, and Silvestri, Turriani, Vasquez, (and it is also likely that Cajetan, Lessius, Sanchez, Lugo, and Sa, among others, hold this view, as found in Salm. cap. 7).

[*Latin ed. p. 514*]

n. 72. And Roncaglia, question 8, response 4, against Soto, Silvestri, Taborda, Valladares, etc., in Salamanca, and against Elbetius, *De homine*, number 17. Roncaglia, in the aforementioned place, and Salamanca, number 75, correctly limit this, together with Lugo, stating that if flight were harmful to the commonwealth, for example, if the accused were a highwayman or the like, then it would not be permissible.

5. However, it is not permissible to assist in a prison break, as the common opinion holds (together with Roncaglia, in the aforementioned place); firstly, because the act of breaking out is only permitted to the accused himself, due to the right to preserve life; and secondly, so that all security of the prison would not be destroyed. Lessius, in the aforementioned place; Bonaventure, *De quibus tenemus*, question 10, paragraph 1.

Question: Here, 1st, whether a condemned man, destined to perish by famine, is obligated to take food if it is offered to him. It is certain that he can,

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as taught by St. Thomas, 2-2, question 69, article 4, ad 2, with the common opinion. However, others say that he is also obligated to take it; because everyone is obligated to preserve his life by every lawful means possible. Thus Cajetan, Bannensis, Covita, etc., with Salamanca, chapter 2, number 31; and Lugo, book 20, number 30, agrees with these, but he admits that the accused may once or even twice reject the food offered to him secretly. But it is more probable that he is not obligated; because it is one thing to positively destroy one's life, and another to negatively not preserve one's life; for the latter is permitted to the accused for a just reason, so that he may undergo the penalty for his crime, just as he may not flee when he is able, as we have said. Thus Roncaglia, in the aforementioned place, with Sayr, Soto, Taborda, and Major, apud Salamanca.

[*Latin ed. p. 515*]

81. Those who assert that something is sufficiently probable, and consider the opposite to be more probable, are not consistent, since in the same treatise on restitution, chapter 2, paragraph 34, they maintain that it is permissible for someone, for the same reason as our own, to yield a plank to a friend in a shipwreck; because this is not directly to kill oneself, but to fail to preserve one's life, which is permitted for a good reason.

284. Question 2: Whether it is permissible for others to provide food to the condemned. Answer: According to common Doctors, this is permissible for all, except for the ministers, but no one is obligated to do so; because the very fact that someone is condemned to die of hunger deprives them of the right to receive help from others in extreme necessity. Thus, St. Thomas [Summa Theologica, 2-2, q. 69, a. 2, ad 3.], Caietan, Soto, and others, along with Salm. c. 7, n. 84 and 85.

Regarding whether the condemned person can, by order of the judge, kill himself, there are two probable opinions. See what was said about this in the preceding section, book 3, n. 369.

285. Question: Whether it is permissible for the condemned person to appeal. Answer: If he knows that the sentence is just and that the process was just, it is not permissible (although he may supplicate); because this would be to impute calumny to the judge. Indeed, one who appeals unjustly is obligated to pay damages. However, if he believes the sentence to be unjust, or that the process was unjust, or if there are different opinions, he may appeal. See Trull. l. c. n. 100. For greater clarity, we say that it is permissible.

[*Latin ed. p. 516*]

Indeed, the accused may appeal to the highest judge, not only if the judgment of the lower court is unjust, but also if, according to the allegations, it is just, but the accused has new evidence in his favor. Salm. cap. 7, n. 38, with Nav. Conversely, if the judgment rendered is entirely just, and the

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contrary cannot be proven. Salm. n. 42. What if the justice of the judgment rendered is doubtful? Answer: In a criminal and capital case, the accused can certainly appeal to a higher judge, as stated by Salm., Sot., Bann. c. 7, n. 57, and this, even if the law in favor of the accused is less probable; because the aforementioned Doctors, with Corel., Lumbier, Turresill, and Filg, state in Salm. n. 48, that, if there is a probable opinion in favor of the accused, even if it is less probable, judgment should be rendered in his favor, according to the rule of law in 6. When the rights of the parties are obscure, the accused should be favored rather than the accuser. See the aforementioned n. 210. However, this is different in a civil case, when certainly the law is less probable against the accused; because then, the higher court, if it judges according to the less probable opinion in favor of the accused, will certainly act unjustly, as condemned by Innocent XI, as stated in Salm. c. 7, n. 46. But what if it is doubtful whether the higher judge will justly render a judgment in favor of the accused? In such a case, Salm. n. 48, with Bus., state that the accused may appeal, even in a civil case; because...

[*Latin ed. p. 517*]

Since the minds of men are different, it may happen that an opinion which an inferior judge considers less probable, will appear more probable to a superior judge; and this, for a just cause, the accused may lawfully attempt, when he already has the benefit of probable law in his favor; and thus it appears to be the practice of all appellants.

DOUBT EIGHTH. HOW TO ACT WITH THE ACCUSED BY THE CONFESSOR.

286. "The following should be observed.

1. Instruct him that what he discusses with you in the forum of conscience is not to be communicated to the judges, and therefore, whether he is guilty or innocent, it can neither benefit nor harm him. The reason is that otherwise, many try to falsely prove themselves innocent in order to be helped by the confessor; others, on the contrary, falsely declare themselves innocent because they fear that the confessor will confer with the judges, and they themselves will be recalled to torture. Therefore, it is advisable: 1.º that the confessor not rashly reveal what has been received outside of confession; 2.º that he not admit the accused to sacramental confession, unless after the matters have been settled in the profane forum; for it will scarcely be possible for him to confess everything, for fear that he will be brought before or forced to confess the same thing to the judge. However,

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before..."

[*Latin ed. p. 518*]

Concerning contrition, it is necessary to proceed with caution. Delrio, book 6, chapter 1, session 3; Tann, part 4, question 5, part 4, number 2. Firstly, one must not compel the accused to confess in an abusive manner; for some are truly innocent and, overcome by such pressure, confess to crimes they did not commit, lest they die unconfessed or be abandoned by their confessor at the point of death. Secondly, confession is futile unless it is made with contrition and a true conversion to God; therefore, one must strive for this, and a good confession will follow, not the opposite. Tann, cited above, part 4, question 5, part 4, number 2. Thirdly, one must be careful not to condemn the manner of judicial proceedings before the accused; therefore, generally, one should not admit complaints of injuries inflicted, since it is not the duty of the confessor to judge such matters, but to prepare the person for penance. Fourthly, although some Fathers permit the judge to use good deceptions to elicit a confession, this is not permitted to the confessor, lest his ministry be defamed. Fifthly, according to the Council of Antioch, canons 33 and 35, it is not permitted to be present openly at the torments, nor to suggest a method of torture, unless it is milder. See Tann, part 4, question last, part 5, number 128. Sixthly, it is advisable to have known indications and proofs obtained in court, and to understand the manner of the proceedings, so that one may act prudently in one's own forum, and, if necessary, prudently advise the judge.

[*Latin ed. p. 519*]

287. » 7. In confessione, il confessore deve esaminare: 1.º se ha denunciato i complici del crimine (se, secondo quanto detto sopra, era tenuto a farlo): e, se ha calunniato falsamente altri, deve indurli a ritrattare, anche a costo della tortura. *V. Tann. d. 4. q. 5. d. 4. n. 104. et dicta dubio superiore.* 2.º Se è una strega, quando, e in quale occasione, è caduta nella stregoneria, in modo che, se in seguito la nega, possa essere convinta nello stesso tribunale. 3.º Riguardo alla qualità della superstizione: se ha rinnegato la fede cristiana, ha adorato il demone, ha avuto opinioni false su Dio e l'eternità, ha abusato di cose sacre, ha danneggiato gli uomini, specialmente quelli vicini, come il marito, i figli, e se ha sedotto altri. Inoltre, riguardo ai peccati carnali. Infine, il confessore deve rivelare al confessato le frodi del demone e istruirlo su come affrontarle, e, tra le altre cose, deve consigliargli di professare la fede e di ripetere frequentemente il Credo. » 288. » 8. Spesso non è opportuno, dopo la condanna, informare il giudice che l'accusato ha ritrattato le sue ultime dichiarazioni; sia perché i giudici danno poca importanza a ciò (e giustamente, v. apud Laym. et Tann. l. c.), sia perché si infrange il sigillo sacramentale, se non viene richiesta l'autorizzazione, rivelando l'innocenza del denunciato, e allo stesso tempo rivelando il peccato

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del denunciante. Perciò, se a volte è opportuno avvertire il giudice, si deve chiedere all'accusato di farlo al di fuori della confessione e in presenza di testimoni, con lo scopo di avvertire il giudice.

[*Latin ed. p. 520*]

289. 9. If one can ascertain the innocence of someone through a confession (and although this is difficult, Tann teaches that it is not impossible, *Tann. d. 4. q. 5. dub. 4. n. 85*), it is perilous for the judge to reveal this, and to intercede for the accused, because after a public confession of guilt, no credence is given to him; furthermore, if many hear it, by remaining silent, he seems to confirm the guilt of others; and finally, because if the guilty know that he is interceding for them as innocent, they seize the opportunity cleverly to conceal their misdeeds. *V. Laym. lib. 3. t. 6. c. 5., Tann. d. 4. q. 5. p. 4. n. 95.*

290. 10. Although it may sometimes be possible to intercede for the accused, even those justly condemned, especially before the highest magistrate, according to Scripture, *Proverbs 24: Erue eos* (Rescue them), it must be done with great prudence and moderation; because the release may be unlawful, and the judge (though not the confessor, unless he foresees it) may become guilty of all the evils that follow from the liberation; indeed, it will be imputed to him, since he was obligated by his office to prevent it. *V. Bon. in VIII. præc. d. 10. q. 2. et 3., Tann. de just. dub. 4. q. 5. d. 4.*

[*Latin ed. p. 521*]

NINTH DOUBT. OF THE OBLIGATIONS OF PHYSICIANS, APOTHECARIES, AND SURGEONS.

291. • ANSWER. Those engaged in these professions are, above all, bound, when they seek or undertake such a service, by a grave obligation to possess sufficient knowledge or skill. Nav. c. 25, n. 60; Anton., Lugo d. 26, n. 1. Furthermore, when treating the sick, they must observe the following rules:

1. They ought ordinarily to follow the opinions of physicians that are secure and safe. The reason is the danger and harm to the neighbor. Thus, Bon., Laym., Sanch., 1. moralis, c. 9.

2. When a certain medicine is known, namely, one that will certainly benefit a particular sick person, they are bound to use it, omitting that of which there is doubt; otherwise, they would imprudently leave the neighbor in danger.

3. If there are no certain medicines, they must use those that are more probable; both because otherwise they would expose the neighbor's health to danger, and because they are bound to perform their office, as far as possible, with the least danger and harm to the neighbor.

4. When there is no hope of the sick person's recovery, and there is no remedy except a doubtful one, of which it is known that there is doubt

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whether it will be beneficial or harmful, they may, indeed they ought, to use it. The reason is that in this way the sick person's condition is managed usefully, and, if death follows,

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It will not be imputed to them, since they have no other hope for life. Layman, book 1, treatise 1, chapter 5; Fill., number 152; Bonaventure, *De Peccatis*, part 2, question 4, paragraph 9. (It is probable, according to what is said in book 1, number 28, question 2.) Therefore, it is resolved:

1. A physician sins if, without sufficient expertise, he attempts to cure a serious illness.

2. If a serious and unusual illness occurs, he sins if he does not devote special effort to it.

3. He sins if he gives a medicine to a sick person which he believes is more likely to harm than to benefit.

4. He sins if he uses untested medicines for the purpose of experimentation, especially when he has medicines that are probably beneficial.

5. He sins if, without properly understanding the nature of the illness, he uses remedies that are rash or dangerous, especially when there is a risk of death or serious harm.

6. He sins if, recognizing the danger of the patient, he is not present when needed, or neglects necessary treatment, or does not allow other doctors to be called.

7. He sins if he advises something contrary to the honor of God or to a precept, for example, incantations, pollution, superstition, etc.

8. He sins if he easily and without necessity excuses someone from fasting, or permits the eating of meat.

9. He sins if he despises a poor, sick person who is in danger. See Bonaventure, *loc. cit.*; Navar, chapter 15; Azorín, book 2, chapter 17, question 11; Escobar, book 2, example 3, chapter 9. (From this, it is rightly said...)

[*Latin ed. p. 523*]

Cross, book 4, number 1534. It is sinful for a physician to omit prescribing medicines to the poor who are in grave danger.

2. A pharmacist sins: 1st, if he practices without being skilled and knowledgeable; 2nd, if he prepares medicines without art or diligence; 3rd, if he uses honey in potions in place of sugar; 4th, if he substitutes one medicine for another (unless it is equally good and of no lesser price), contrary to the physician's prescription, when there is a danger of serious harm. (See the aforementioned, book 3, number 821.) See also Salas, book 34. 5th, if he sells medicines for preventing conception or for expelling the fetus. 6th, if he sells useless drugs, etc. (See Escobedo, in loco).

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TENTH DOUBT: WHAT OBLIGATIONS DO MERCHANTS, CRAFTSMEN, AND OTHER LAY PEOPLE HAVE?

292. RESPONSE: These obligations are evident from the statements concerning the seventh commandment. From these, it follows that:

1. A merchant sins: 1st, if he sells poison or other prohibited items, suspecting their misuse. (See the aforementioned, book 2, number 72.) 2nd, if he is willing to accept any price, even an unjust one, from the buyer. 3rd, if he sells goods at a higher price than the maximum price due to a delayed payment. 4th, if he conceals a serious defect in the goods.

[*Latin ed. p. 524*]

1. He sins if he deceives, diminishing the weight or measure.

2. If, to the detriment of buyers, he establishes an unjust monopoly, he compares all goods of the same kind and sells them at an exorbitant price, according to his whim.

3. If he sells goods to someone who does not know the price, either at a lower or higher price.

4. If he mixes old and useless goods with new ones and sells both at the same price.

5. If he defrauds just taxes.

6. If, when he is able, he does not pay his debts to creditors at the appointed time, causing them great harm.

7. If he pays for goods instead of money, against the will of the creditor.

8. If he buys or sells publicly on holy days, contrary to the permitted custom.

9. If he falsely swears that he bought goods for such a price.

10. If he enters into a contract with anyone, doubting the justice of the matter.

11. If he buys stolen goods, etc. (See Escob. t. 2. ex. 2. c. 12. (See also the passages on restitution, book 3, n. 599.))

12. The bookseller sins:

1. If he sells prohibited or lascivious books.

2. If he sells a book that is defective as if it were complete, etc. (See Esc. c. 13.)

13. The money changer or goldsmith sins:

1. If he sells metal as if it were gold or silver.

2. If he mixes more air with gold or silver than the art requires, and he does not inform the buyers of the mixture, nor does he reduce the price.

3. If he buys something from stolen goods in bad faith.

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4. If...

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"He may sell a common stone for a precious price, or buy something of little value for a high price, etc."

4. Tailors, shoemakers, and other craftsmen sin:

1. If they swear that they will complete the work on a certain day, knowing or suspecting that it will not be completed.

2. If they demand more material than is necessary for the work, or if they retain leftover pieces without the owner's consent.

3. If they violate a feast day without a serious reason, either by themselves or through their servants. *V. Esc. l. i. c. 13.*

"END OF THE SEVENTH VOLUME."

[*Latin ed. p. 527*]

INDEX OF THOSE THINGS CONTAINED IN THIS SEVENTH VOLUME. BOOK FOURTH. CONCERNING PARTICULAR PRECEPTS RELATING TO THE SPECIFIC CONDITIONS OF MEN. Chapter I. ON THE RELIGIOUS STATE. Page 5. II. ON THE STATE OF CLERICS. 144. III. ON THE STATE AND OFFICE OF CERTAIN LAY PERSONS, AND ESPECIALLY JUDICIAL ONES. 382.

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